

*United States Court of Appeals
for the Second Circuit*



APPENDIX

75-7185

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-7185

B

CINEMA 5, LTD.,

Plaintiff-Appellant,

—against—

P/S

CINEFAMA, INC., NATIONWIDE THEATRES CORP., CONSOLIDATED AMUSEMENT CO., LTD., PACIFIC THEATRES CORPORATION, ATLANTIC THEATRES CORP. OF CALIFORNIA, RKO-STANLEY WARNER THEATRES, INC., WILLIAM R. FORMAN, MICHAEL R. FORMAN and JAMES J. COTTER,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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Docket Entries

DATE	PROCEEDINGS
Aug. 15-74	Filed complaint & issued summons.
Aug. 16-74	Filed summons & affdvt of service by Carl Dorn.
Aug. 15-74	Filed Order appointing persons to serve process.....Clerk.
Aug. 21-74	Filed pltffs notice of motion for immediate discovery. Ret. 9-4-74.
Aug. 21-74	Filed affdvt in support of pltffs motion for immediate discovery.
Aug. 26-74	Filed affdvt of service by Stephen L. Eccles.
Aug. 26-74	Filed affdvt of service by Frank S. Skovold.
Aug. 29-74	Filed affdvt of Frank S. Skovold that he personally served the summons & complt on Michael Forman, deft.
Aug. 29-74	Filed afidvt of personal service by Frank S. Skovold of notice of motion for discovery in support of pltffs motion.
Aug. 29-74	Filed affdvt of personal service by Stephen L. Eccles of summons & complt on James J. Cotter, deft.
Aug. 29-74	Filed affdvt of Stephen L. Eccles of personal service of notice of motion for discovery on James J. Cotter, deft.
Sept. 3-74	Filed Stip & Order that the motion of pltff. for an order pur. to Rule 30 & 34 of FRCP for an order granting immediate discovery & etc is adj. to 9-11-74. Brieant, J.
Sep. 11-74	Filed Stip & Order adjourning to 9-19-74 pltffs motion for discovery, etc. BRIEANT, J.
Sep. 16-74	Filed defts notice of motion to dismiss the complt. Ret. 9-23-74.

Docket Entries

DATE	PROCEEDINGS
Sep. 16-74	Filed defts memo of law in support of motion to dismiss.
Sep. 16-74	Filed defts affdvt in opposition to pltffs motion for discovery.
Sep. 16-74	Filed defts memo of law in opposition to pltffs request for immediate discovery. (Defts Forman, Forman & Cotter)
Sep. 16-74	Filed Stip. & Order that the time of defts to answer is extended to 9-19-74..... Brieant, J.
Sep. 16-74	Filed defts notice to take oral deposition of pltff.
Oct. 17-74	Filed defts stipulation of facts.
Oct. 17-74	Filed pltffs affdvt in connection with defts motion to disqualify his atty's.
Oct. 23-74	Filed Affdvt. in support of defts' motion to disqualify pltff's counsel.
Nov. 1-74	Filed Pltff's Memorandum in Opposition to Deft's motion to Disqualify pltff's attorneys.
Feb. 18-75	Filed Memorandum & Order Cin- erama, Inc., one of the claimed malefac- tors sued herein, has moved to disqualify pltff's N.Y.C. Law firm from further representation of it in this litigation, upon claimed conflict of interest.....and accordingly "disqualification is required to avoid even the appearance of pro- fessional impropriety".....Such dis- qualification extends to partners and associates of one so disqualified.....

Docket Entries

DATE	PROCEEDINGS
	The motion is granted. As this order is appealable, all proceedings shall be held in abeyance until 30 days following appellate finality, unless otherwise ordered by this Court.....So Ordered..... Brieant, J. m/n
2-18-75	Filed Deft's Reply Memorandum in support of motion to dismiss.
2-18-75	Filed Defts' memo. in support of their motion to disqualify pltff's attys.
2-28-75	Filed Pltff's Notice of Motion for reargument order.....ret. 3-10-75.
2-28-75	Filed Pltff's Memo of Law in support of motion to reargue.
3-18-75	Filed Pltff's Notice of Appeal to USCA..... from the Order ent. 2-18-75..... Copy mailed on 2-18-75..... to: Simon Rose, Esq. of Phillips, Nizer, Benjamin, Krim & Ballon.
3-27-75	Filed Memorandum in Opposition to motion to dismiss dtd: Sept. 20—74.
3-27-75	Filed Reply Memorandum in support of motion for immediate discovery dtd: Sept. 20—74.
3-27-75	Filed Reply Affidavit with respect to discovery by plaintiff dtd: Sept. 20—74.
3-27-75	Filed memo. endorsed on Motion for Re-argument dtd: Feb. 28—75....."On March 10, 1975 there was no appearance by movant for purpose of argument or submission of this motion. It is deemed abandoned or withdrawn, without prejudice Brieant J.

Docket Entries

DATE	PROCEEDINGS
4- 2-75	Filed Pltff's Notice of Motion for reargument.....ret. 4-7-75.
4- 2-75	Filed Pltff's Memo of Law in support of its motion for reargument.
4- 4-75	Filed Memo End on back of motion filed 4-2-75.....The Court will hear reargument on its Memorandum & Order dated 2-14-75 on Apr. 29-75 at 9:30Am in Courtroom 519, and will receive affdvt. Any affdvts. in support of the motion to reargue shall be served and filed by the close of business 4-16-75, and answering papers, if any, shall be received by the close of business 4-28-75.....The hearing noticed for 4-1-75 is cancelled. So ordered.....Brieant, J. mn
4-16-75	Filed plft's Affdvt by D.J. Cohn, in support of pltff's motion for reargument.
4-28-75	Filed Defts' Opposition affidvt. by J. P. Kane, to pltff's motion to reargue.
4-28-75	Filed Defts' memo. in opposition to motion for reargument.
5- 8-75	Filed Order on Reargument of Memo. & Order dtd. 2-14-75.....Ordered, that the aforesaid prior determination made 2-14-75 is hereby confirmed and adhered to.....Brieant, J. mn
5-13-75	Filed Order granting reargument..... and on reargument I am adhering to my determination and it is so ordered on this record. I thank you, gentlemen..... Brieant, J. mn
5-18-75	Filed stipulation designating true copy of document (memo. in support of defendant's motion to disqualify) to the U.S. C.A.

Complaint

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

CINEMA 5, LTD., :
Plaintiff, :
-against- :
CINERAMA, INC., NATIONWIDE THEATRES : 74 Civ. 3549 (CLB, Jr.)
CORP., CONSOLIDATED AMUSEMENT CO., :
LTD., PACIFIC THEATRES CORPORATION, : VERIFIED COMPLAINT
ATLANTIC THEATRES CORP. OF CALIFORNIA, :
RKO-STANLEY WARNER THEATRES, INC., :
WILLIAM R. FORMAN, MICHAEL R. FORMAN :
and JAMES J. COTTER, :
Defendants. :
-----x

Plaintiff Cinema 5, Ltd. ("Cinema 5") by its attorneys Webster Sheffield Fleischmann Hitchcock & Brookfield, complaining of the defendants, alleges upon information and belief, except as to paragraph 3, as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction of this action pursuant to Section 27 of the Securities Exchange Act of 1934, as amended, (the "1934 Act"), 15 U.S.C. §78 aa, and Section 16 of the Clayton Act, 15 U.S.C. §26. The claims herein arise pursuant to Section 13(d) of the 1934 Act, 15 U.S.C. §78m(d), and the Rules and Regulations promulgated thereunder, Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§1, 2 and Section 7 of the

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Clayton Act, 15 U.S.C. §18. The matter in controversy exceeds the sum of ten thousand dollars, exclusive of costs.

2. The acts, or some of them, constituting the violations of law complained of took place within the Southern District of New York. Plaintiff's claims arise within the Southern District of New York, where it has been injured by reason of defendants' violations of law. Venue is properly laid in the Southern District of New York, pursuant to Section 27 of the 1934 Act, 15 U.S.C. §78aa, Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§15 and 26 and 28 U.S.C. §1391.

THE PARTIES

3. Plaintiff Cinema 5 is a New York corporation with its principal place of business at 595 Madison Avenue, New York, New York. It is primarily engaged in the business of distributing films and in the ownership and operation of motion picture theatres in the New York City metropolitan area. In Manhattan, Cinema 5 has ownership interests in and operates twelve theatres, eight of which are first-run. Cinema 5 common stock is listed and traded on the American Stock Exchange, and is registered with the Securities and Exchange Commission (the "SEC") pursuant to Section 12 of the 1934 Act.

4. Defendant Cinerama, Inc. ("Cinerama") is a New York corporation with an office at 1345 Avenue of the Americas,

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Complaint

New York, New York. It is primarily engaged in the business of motion picture distribution, and the operation of two motion picture theatre chains, one in northern California (Cinerama Theatres, Inc. of California), and the other principally in the eastern half of the United States (RKO-Stanley Warner Theatres, Inc.). Both theatre chains are wholly-owned subsidiaries of Cinerama. Cinerama conducts a substantial amount of business in the Southern District of New York.

5. Defendant RKO-Stanley Warner Theatres, Inc. ("RKO"), a Delaware corporation, is a wholly-owned subsidiary of Cinerama. RKO owns and operates approximately 116 motion picture theatres, 19 of which are located in the New York City metropolitan area. Six of those 19 theatres are first-run and located in Manhattan.

6. Defendant Atlantic Theatres Corporation of California ("Atlantic") is a California corporation with offices at 120 North Robertson Boulevard, Los Angeles, California. All of the outstanding shares of its capital stock are owned by defendant William R. Forman and members of his family. Atlantic is primarily engaged in the business of owning and operating motion picture theatres. It is the beneficial owner of approximately .4% of Cinerama's voting securities.

7. Defendant Pacific Theatres Corporation ("Pacific") is a California corporation with offices at 120 North Robertson

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Complaint

Boulevard, Los Angeles, California. All of the outstanding shares of its capital stock are owned by defendant William R. Forman and members of his family. Pacific is primarily engaged in the business of owning and operating motion picture theatres. It is the beneficial owner of approximately 32% of Cinerama's voting securities. It is the parent of defendant Nationwide Theatres Corp.

8. Defendant Nationwide Theatres Corp. ("Nationwide") is a California corporation with its principal place of business at 120 North Robertson Boulevard, Los Angeles, California. It is principally engaged in the operation of motion picture theatres. Nationwide owns of record approximately 20.5% of Cinerama's voting securities. Nationwide is a wholly-owned subsidiary of defendant Pacific, and the parent of defendant Consolidated Amusement Co., Ltd.

9. Defendant Consolidated Amusement Co., Ltd. ("Consolidated") is a Hawaii corporation with its principal place of business at 510 South Street, Honolulu, Hawaii. It is principally engaged in the operation of motion picture theatres in Hawaii. Consolidated is a subsidiary of Nationwide.

10. Defendant William R. Forman ("Forman") is Chairman of the Board of Directors, President, Chief Executive Officer, and principal beneficial stockholder of defendant Cinerama.

Complaint

He is President and a member of the Board of Directors of defendants Atlantic, Pacific, and Nationwide. He is a member of the Board of Directors of defendant Consolidated. He controls all the corporate defendants and other corporations engaged principally in the exhibition of motion pictures in the United States and certain foreign countries.

11. Defendant Michael R. Forman is Vice President-Secretary and a member of the Board of Directors of defendant Cinerama. He is Vice President and a member of the Board of Directors of defendants Atlantic, Pacific and Nationwide. He is President and a member of the Board of Directors of Consolidated. He is Forman's son.

12. Defendant James J. Cotter is a member of the Board of Directors of defendant Cinerama. He is Vice President and a member of the Board of Directors of defendants Atlantic, Pacific, Nationwide and Consolidated.

ALLEGATIONS APPLICABLE TO ALL CAUSES OF ACTION

13. Cinema 5 is engaged in interstate commerce, and each and every corporate defendant is engaged in interstate commerce.

14. Forman controls Cinerama and the other corporate defendants, as well as other corporations in the motion picture

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industry, by virtue of record and beneficial stock ownership in them and control over their management.

15. Commencing on or about February 1, 1974, Forman and the other defendants formed a group and entered into a plan, combination and conspiracy among themselves and with others whose identities are unknown to plaintiff to acquire and/or control enough shares of Cinema 5's common stock to give them actual control over the workings and management of Cinema 5 by means of illegal, deceptive and fraudulent acts and practices in violation of the 1934 Act and the Rules and Regulations promulgated thereunder and the Clayton and Sherman Acts.

16. Pursuant to and in furtherance of said plan, combination and conspiracy, defendants caused Consolidated to purchase on February 27, 1974, the 168,167 shares of the common stock of Cinema 5 owned by Sylvia Martin, The Sylvia Martin Foundation, Inc., and Harold M. Wit. This block of shares represented approximately 24% of the aggregate outstanding shares of Cinema 5 at that time. The purchase was negotiated and consummated by defendants' agents within the Southern District of New York.

17. Pursuant to and in furtherance of said plan, combination and conspiracy, defendants caused Consolidated and Nationwide to purchase at least 48,300 additional shares of

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Cinema 5's common stock since February, 1974. These shares were purchased both on the open market through the instrumentalities of the American Stock Exchange, which is located in the Southern District of New York, and in privately negotiated transactions some of which were either negotiated or consummated in the Southern District of New York.

18. On August 1, 1974, Nationwide and Consolidated owned at least 216,467 shares of the 700,825 shares of Cinema 5 stock issued and outstanding at that time, which amounted to slightly over 30%. On August 14, 1974, Cinema 5 issued 130,000 additional shares. Presently, there are 830,825 shares outstanding. Nationwide and Consolidated together own the largest single holding of any stockholder or group of stockholders in Cinema 5, which now amounts to slightly over 26%. Defendants may own additional shares which have not yet been transferred to them, through nominees or through arrangements with third parties. In addition, Forman has claimed that other stockholders of Cinema 5 have agreed to vote their shares with him.

19. In or about March, 1974, Forman met with Cinema 5's President, Donald S. Rugoff ("Rugoff") and requested that he and his son, defendant Michael R. Forman, be elected to Cinema 5's Board of Directors. Rugoff subsequently informed Forman that plaintiff's board could not accede to his demand because, if consummated, it would constitute a violation of Section 8 of

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Complaint

the Clayton Act.

AS AND FOR A FIRST CAUSE OF ACTION

20. Plaintiff realleges paragraphs 1 to 19 hereof.

21. In furtherance of their plan, combination and conspiracy to acquire control of Cinema 5, defendants caused Nationwide and Consolidated to make purchases of Cinema 5 stock, as outlined above. One of their purposes was to acquire control of Cinema 5 so that the combined film-buying power of the RKO and Cinema 5 theatres could be used to restrain competition in the acquisition and exhibition of first-run films in Manhattan.

22. Thereafter, on or about March 1, 1974, Consolidated filed with the SEC, the American Stock Exchange, and with Cinema 5, a Schedule 13D pursuant to Section 13(d) of the 1934 Act and the rules promulgated thereunder with regard to its purchases of shares of Cinema 5 common stock. Subsequently, on or about April 15, 1974, Nationwide filed a Schedule 13D with the SEC, the American Stock Exchange, and with Cinema 5, with respect to its purchases of shares of Cinema 5 common stock and Consolidated filed Amendment No. 1 to its Schedule 13D. According to these Schedules 13D, those purchase transactions were "for the purpose of acquiring an interest in Cinema 5 Ltd. and exercising all rights of a shareholder." The Schedules 13D and Amendment were false and misleading in numerous material respects, including:

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Complaint

- (i) they improperly and unlawfully failed to reveal that defendants were and are acting in concert and planned to acquire control of and dominate Cinema 5;
- (ii) they improperly and unlawfully failed to reveal that defendants were and are planning to utilize their control over Cinema 5's business for the benefit of Forman, Cinerama and RKO, and to the detriment of Cinema 5 and its stockholders;
- (iii) they improperly and unlawfully failed to reveal defendants' other plans with respect to Cinema 5's business and corporate structure;
- (iv) they improperly and unlawfully failed to reveal the contracts, arrangements or understandings defendants had and have with third parties whose identities are unknown to plaintiff with respect to the purchase and voting of Cinema 5 stock and the full extent of their ownership and control of Cinema 5 stock;
- (v) they improperly and unlawfully failed to reveal that Nationwide is a subsidiary of Pacific, that Nationwide is the largest single record owner of Cinerama stock, and that it is largely through

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Complaint

Nationwide's and Pacific's stock ownership in Cinerama that Forman controls the latter;

- (vi) they improperly and unlawfully failed to reveal the serious antitrust problems raised by defendants' purchases of Cinema 5 stock.

23. By virtue of the aforesaid violations of §13(d) of the 1934 Act, the investing public has been injured because information highly material to investment decisions concerning Cinema 5's stock was not disclosed, and Cinema 5 has been injured in the Southern District of New York in at least the following respects:

- (i) its stock has been illegally accumulated;
- (ii) it will be irreparably injured by the voting of these illegally accumulated shares;
- (iii) such illegal accumulation may well involve Cinema 5 in a violation of the federal antitrust laws within the Southern District of New York;
- (iv) such illegal accumulation has caused uncertainty in the conduct of business by Cinema 5.

24. Cinema 5 has no adequate remedy at law against these violations of the 1934 Act.

AS AND FOR A SECOND CAUSE OF ACTION

25. Plaintiff realleges paragraphs 1 to 24 hereof.

26. Operation of the theatres owned by defendant RKO, Cinerama's subsidiary, is subject to the antitrust consent judgments which arose out of United States v. Paramount Pictures, Inc., et al. (Equity No. 87-273) and U.S. v. Loew's Incorporated, et al. (Equity No. 87-273). Under those judgments, RKO may not acquire existing theatres in the United States (apart from theatres substituting for theatres lost through physical destruction or conversion into non-theatrical purposes) except if upon application to the Court, the Court finds that such acquisition will not unduly restrain competition.

27. As outlined above, defendants are acquiring Cinema 5 common stock for the benefit of Cinerama and RKO in that defendants, under Forman's leadership, plan to use the combined film-buying power of the RKO and Cinema 5 theatres in order to restrain competition in the acquisition and exhibition of first-run films in Manhattan.

28. The purpose of the Paramount Pictures consent decree was and is to prevent RKO from acquiring additional theatres, either directly or indirectly, without the permission of the Court.

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29. The acquisition of Cinema 5 common stock constitutes a violation of Sections 1 and 2 of the Sherman Act and the Paramount Pictures consent decree entered thereunder in that it is an attempt on the part of RKO indirectly to acquire existing theatres without permission of the Court.

30. By virtue of the aforesaid violations of Sections 1 and 2 of the Sherman Act and the Paramount Pictures consent decree entered thereunder, the public has been injured because of the inherent threat to competition in New York City's motion picture theatre industry, and Cinema 5 has been injured in the Southern District of New York in that it may well become involved involuntarily in a violation of Sections 1 and 2 of the Sherman Act within the Southern District of New York and will be subject to suits brought by both the government and private parties in order to enforce the Act.

31. Cinema 5 would be irreparably injured by, and has no adequate remedy at law against, the above violations of the Sherman Act and the Paramount Pictures consent decree.

AS AND FOR A THIRD CAUSE OF ACTION

32. Plaintiff realleges paragraphs 1 to 31 hereof.

33. Cinema 5 and RKO compete in New York City's first-run motion picture theatre market, which is located in Manhattan.

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This market is regarded by both the industry and the public as a separate economic entity with unique characteristics. First-run Manhattan theatres often exhibit the first showing of motion picture films anywhere in the United States. Such theatres often have the exclusive right to such premiere showing or exhibit the film with one or more other first-run theatres. These theatres, therefore, deal with an exclusive product, first-run motion picture films, and have a clientele willing to pay a higher admission price to see films at their premiere showing.

34. Cinema 5 is one of the leading owner-operators of first-run motion picture theatres in New York City. Cinema 5 operates approximately 19% of New York City's first-run theatres. For the period May 16, 1973 to May 15, 1974, Cinema 5's eight theatres grossed approximately \$7.2 million from ticket sales.

35. Defendant RKO operates six first-run theatres in Manhattan, and approximately 14% of New York City's first-run theatres. For the period May 16, 1973 to May 15, 1974, RKO's six theatres grossed approximately \$3.9 million from ticket sales.

36. RKO is a subsidiary of Cinerama. Both companies are controlled by Forman, whose entertainment empire includes over 350 motion picture theatres located in the United States and foreign countries. Forman's huge resources give him and his

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Complaint

companies enormous power and leverage in competing against other firms in the industry.

37. There are substantial barriers to the entry of new firms into New York City's first-run motion picture theatre market, in that:

- (i) a large capital investment is required to finance the construction of theatres in New York City;
- (ii) rents for existing theatres are high;
- (iii) there is a shortage of quality product (films) available;
- (iv) attendance at theatres is declining due to competition from television and other leisure time activities.

38. The effect of defendants' acquisition of Cinema 5, so that the combined film buying power of RKO and Cinema 5 may be used to restrain competition in the acquisition and exhibition of first-run films in Manhattan, may be substantially to lessen competition or to tend to create a monopoly in New York City's first-run motion picture theatre market, all in violation of Section 7 of the Clayton Act, in that:

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Complaint

- (i) the acquisition will result in Cinerama and RKO controlling approximately 33% of the theatres in the market, clearly an undue percentage, especially since the next largest exhibitor operates only approximately 19% of New York City's first-run theatres;
- (ii) competition previously existing in that market between Cinema 5 and RKO will be completely eliminated;
- (iii) Forman's planned theatre complex in New York City (Cinema 5 - RKO) will be able to foreclose competition far beyond what its approximately 33% market share would suggest, due to Forman's enormous leverage and buying power in the motion picture industry as a whole;
- (iv) already existing entry barriers in the industry would be raised even higher.

39. By virtue of the aforesaid violation of the antitrust laws, the public has been injured because of the inherent threat to competition in New York City's first-run motion picture theatre industry, and Cinema 5 has been injured in that it may well become involved involuntarily in violations

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of Sections 1 and 2 of the Sherman Act within the Southern District of New York which would subject it to both government and private suits for equitable and monetary relief under that Act.

40. Cinema 5 would be irreparably injured by, and has no adequate remedy at law against, the violation of Section 7 of the Clayton Act described above.

WHEREFORE, Cinema 5 demands judgment:

(1) Preliminarily and permanently enjoining defendants (and their agents, affiliates, servants, employees and all other persons acting in concert with them or on their behalf):

- (a) from acquiring or attempting to acquire in any manner any shares of the common stock of Cinema 5;
- (b) from voting any shares of Cinema 5 stock held or acquired subsequent to February 1, 1974, the approximate date of the formation of the group and the initiation of the plan, combination and conspiracy of defendants to acquire working control of Cinema 5;

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Complaint

(c) from soliciting proxies from Cinema 5 shareholders;

(d) from exercising, directly or indirectly, any influence upon the management of Cinema 5; and

(e) otherwise utilizing any such stock or shares of Cinema 5 stock previously acquired as a means of controlling or affecting the management of Cinema 5; and

(2) Requiring defendants to divest themselves of all shares of Cinema 5 common stock which they presently own;

(3) For such damages and costs, including attorneys' fees, as Cinema 5 has sustained or shall sustain as a result of defendants' violations of the 1934 Act and the antitrust laws;

(4) For such other and further relief as the Court shall deem just and proper;

(5) For Cinema 5's costs and disbursements herein.

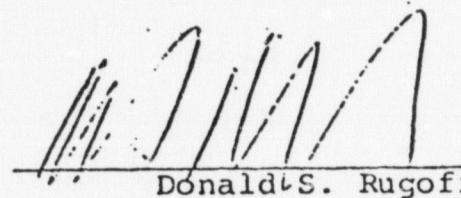
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By Donald J. Wilkes
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AFFIDAVIT

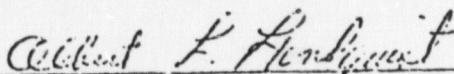
STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

DONALD S. RUGOFF, being duly sworn, deposes and says that he is President of Cinema 5, Ltd., plaintiff in the instant action, that he is authorized to make this Affidavit on its behalf and that the facts set forth in the foregoing complaint are true and correct except as to matters stated on information and belief and as to those matters he believes them to be true.



Donald S. Rugoff

Sworn to before me this
11th day of August, 1974.



Albrecht L. Lundquist

Notary Public
ALBRECHT L. LUNDQUIST
Notary Public, State of New York
No. 41-2426769 - Queens County
Commission filed in New York County
Term Expires March 30, 1975

Affidavit of Manly Fleischmann

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CINEMA 5, LTD.,

Plaintiff, : 74 Civ. 3549 (CLE)

-against- :

CINERAMA, INC., NATIONWIDE THEATRES
CORP., CONSOLIDATED AMUSEMENT CO.,
LTD., PACIFIC THEATRES CORPORATION,
ATLANTIC THEATRES CORP. OF CALIFORNIA,
RKO-STANLEY WARNER THEATRES, INC.,
WILLIAM R. FORMAN, MICHAEL R. FORMAN
and JAMES J. COTTER,

AFFIDAVIT

Defendants. :

-----x
STATE OF NEW YORK) ss.:
COUNTY OF NEW YORK)

MANLY FLEISCHMANN, being duly sworn, deposes and says:

1. I am an attorney at law, licensed to practice in the State of New York since 1933. During my professional career I have served at different times as a director of the Bar Association of the City of New York and as a director of the Bar Association of Erie County. I am a partner in the firm of Webster Sheffield Fleischmann Hitchcock & Brockfield, One Rockefeller Plaza, New York 10020, attorneys for the plaintiffs in this action. I am also a partner in the firm of Jaekle, Fleischmann & Mugel, 700 Liberty Bank Building, Buffalo, New York 14202. I make this affidavit in connection with an application which has been made to disqualify the New York firm as attorneys for the plaintiff herein.

2. The only relationship between the two law firms referred to above is the fact that I am a partner in each firm. The two firms are managed and operated separately, but each firm refers cases to the other when appropriate. The New York firm was formed in 1961 as a result of a merger of two separate firms -- Webster Sheffield & Chrystie and Fleischmann Jaeckle Stokes & Hitchcock. The present New York firm has 53 lawyers, including 24 partners. The Buffalo firm was founded in 1955; that firm has 38 lawyers, including 24 partners. I have practiced law in Buffalo, except for occasional government service, since 1933. I commenced practice in New York City in 1952, originally as an individual practitioner and eventually as a member of the present firm. I divide my time between the two firms, usually spending Tuesday, Wednesday and Thursday in New York and the balance of the week in Buffalo.

3. During most of my time at the bar, I have specialized in litigation, and I am a member of the American College of Trial Lawyers. The exhibits in this case will show that a lawsuit was started by Lyell Theatre Corporation and Martina Theatre Corporation by the filing of a complaint in the Office of the Clerk in the United States District Court for the Western District of New York in December 1971. The documents will also show that among the named defendants were Cinerama Releasing Corporation and Cinerama, Inc. Originally, these defendants sought to retain Frank G. Raichle, Esq. of Buffalo, New York as their counsel. He was unable to accept the retainer and recommended me and my Buffalo firm. Thereafter, I received a call from Harry B. Swerdlow, Esq. of Los Angeles, who advised me that he was general counsel for both defendants and requested that our firm accept the

Affidavit of Manly Fleischmann

defense, which we did. The nature of the case, which might be called a typical civil antitrust case brought by motion picture theatre operators against distributors is fully set forth in the complaint. I became acquainted with the issues in the case and participated, particularly in the early months, in the management of the litigation. However, the day to day work was done primarily by my Buffalo associate, now my partner, Brian J. Troy, Esq. The correspondence between my office and that of Mr. Swerdlow was also, almost without exception, prepared by Mr. Troy, and in the early months this was sent out over my signature. More recently Mr. Troy has corresponded directly with Mr. Swerdlow without my seeing or signing such letters. We were asked to minimize the expense of handling the case, and we have done so. For example, pleadings and answers to interrogatories have generally been prepared by Mr. Swerdlow or his associates. With the knowledge and at the request of Mr. Swerdlow, we also represented another California defendant, National General Pictures Corporation. Our total bills up to December 11, 1973 to Cinerama, Inc. and Cinerama Releasing Corporation were \$3,865.00. A similar amount was charged to National General. The total time we have spent on the case in the nearly three years since the action was started has been approximately 193 hours. This includes all of our time, including that devoted to the defense of National General. It also includes the time involved in a completely similar case filed later in the United States District Court for the Western District of New York by the same plaintiffs against substantially the same defendants in which we appeared for Cinerama Releasing Corporation. This latter case involved identical claims made with respect to the motion picture distribution arrangements in Buffalo, New York, whereas the first case related to Rochester, New York.

Affidavit of Manly Fleischmann

Of the 193 hours charged to this matter, the hours which I devoted to the case numbered 22 over the entire period, while Mr. Troy or other associates and partners recorded 171 hours. I have not recorded any hourly charges since May 27, 1972 and, in fact, have not participated in any discussions or decisions with respect to these cases since that time. At no time, until receiving a telephone call from Mr. Swerdlow late in the summer of 1974 (see paragraph 6 below) have I ever mentioned these cases or anything about them to any of my partners and associates in New York. We do not have a common file in either office through which one office could become aware of the representations which the other office had undertaken.

4. During the summer of 1974, I was hospitalized in New York City for major surgery. I left the hospital on Monday, August 12. Prior to that time, I had never been involved in any manner in the affairs of the present plaintiff herein, Cinema 5. I do not recall that I even knew we had a client by that name, although I had heard of, but had not met, Mr. Donald Rugoff who is President of the plaintiff. I did not know anything at all about the present lawsuit which had been prepared and commenced while I was in the hospital. I have never analyzed or discussed the issues in this action, except after the call from Mr. Swerdlow referred to below, and then only to the extent of trying to determine whether they had any similarity or relevance to the issues in the Buffalo and Rochester actions; I determined that they did not.

Affidavit of Manly Fleischmann

5. I first learned of the present action when I examined, just after my release from the hospital, our New York office form called a "new matter sheet" which described the case in very general terms. Since I had had nothing to do with either the Buffalo or Rochester cases for many months, the name "Cinerama" did not cause me to recall that we had such a client in the Buffalo office.

6. My attention to the issue now presented to the court was raised by a telephone call which I received from Mr. Swerdlow sometime during the week of August 12. Mr. Swerdlow reminded me that the Buffalo firm represented Cinerama in the Western District and expressed the opinion that the New York firm should not accept the case against Cinerama in the Southern District. I told him what was then the fact, that I knew absolutely nothing about the present case and would look into the matter. I later received a call from Simon Rose, Esq. of the New York firm of Phillips Nizer Benjamin Krim & Ballon, and he told me that he was acting as local counsel for Cinerama and thought that we had a conflict of interest which should compel us to withdraw. I then examined the complaint in the present case and determined that there were no common issues with those in the Rochester and Buffalo litigation whatsoever. I learned that Mr. Rugoff, the President of the present plaintiff and his corporation had been regular clients of the New York office for 17 years and that my partner, Donald J. Cohn, Esq., had been working on the preparation of the present matter for a substantial period of time. Under these circumstances, I felt that the decision as to whether to disqualify the

Affidavit of Manly Fleischmann

New York firm should be left to my partners in New York and that I should not participate in that decision. This was done and it was concluded that the New York firm was not disqualified. Thereupon, I wrote to Mr. Swerdlow telling him of this decision and offering to withdraw the Buffalo firm from the Rochester and Buffalo cases. A copy of this letter is annexed hereto marked Exhibit A. Up to the present date, I have not received any reply to this letter.

7. Finally, I should assure the court that no information which I may have gleaned from my representation of Cinerama in the Western District has been or ever will be communicated to my partners in New York even though such information would have no relevance in the present case. In the same way, I also assure the court that no information which I have or may in the future acquire with respect to the New York action will ever be communicated to any of my partners or associates in Buffalo. I further undertake that I will take absolutely no part in any legal services rendered to the plaintiff in the present case, nor will I seek to obtain or accept any information with respect thereto, it being my purpose to completely divorce myself in every manner from that case as has been the fact ever since it was accepted and instituted.

/s/ Manly Fleischmann

Manly Fleischmann

Sworn to before me this
10th day of October, 1974.

/s/ Amalia Vargas
Notary Public

AMALIA VARGAS
NOTARY PUBLIC, State of New York
No. 60-750-337
Qualified in Westchester County
Certification by the County
Commissioner, Dec. 1975

EXHIBIT A ANNEXED TO AFFIDAVIT OF
MANLY FLEISCHMANN

JAECKLE, FLEISCHMANN & MUGEL

ATTORNEYS AT LAW

700 LIBERTY BANK BUILDING BUFFALO, NEW YORK 14202

716-856-0600

September 16, 1974

Harry L. Swerdlow, Esq.
Swerdlow, Clinkbar & Shimer
544 United California Bank Bldg.
9601 Wilshire Boulevard
Beverly Hills, California 90210

Re: Cinerama

Dear Mr. Swerdlow:

I am informed that there will be a meeting in the Federal Court in New York City on Monday, September 23rd to discuss the possible conflict of interest which you called to my attention over the telephone recently.

As I informed you, I was in the hospital for surgery during a large part of the summer, including the time when the Cinema V matter was started by the New York office. I therefore knew nothing about it until you called me. The two firms of which I am a partner in New York and Buffalo are run as entirely separate entities, so that it was not possible to discover the earlier representation through any search of the records maintained in New York.

My New York partners believe that there is no real conflict of any kind, in view of the fact that the subject matters of the two cases are entirely different and appear to be unrelated. In addition, I have not participated in the New York case, nor would I intend to, and the fact of the matter is that I have had no active participation in the Buffalo case for the past many months.

Needless to say, however, I am most unhappy that the incident occurred. I cannot control the position to be taken by my New York partners and do not think it would be appropriate for me to do so, in any event. However, in the Buffalo case I was personally retained, so the situation is different.

Exhibit A Annexed to Affidavit of Manly Fleischmann

Harry B. Swerdlow, Esq.
Page 2

September 16, 1974

The purpose of this letter is to assure you that, whether the judge in New York disqualifies our New York firm or not, I will comply with your wishes with respect to continued representation in Buffalo. In other words, no matter how the judge may rule, we will continue to represent you in the Buffalo cases if you wish us to do so, or we will withdraw immediately in favor of any other counsel of your selection. This latter action will be taken at any time upon your request.

Yours very truly,


MANLY FLEISCHMANN

MF:lg

Stipulation of Facts

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CINEMA 5, LTD.,	:	
Plaintiff,	:	
- against -	:	74 Civ. 3549
CINERAMA, INC., NATIONWIDE THEATRES	:	(C.L.B., Jr.)
CORP., CONSOLIDATED AMUSEMENT CO.,	:	
LTD., PACIFIC THEATRES CORPORATION,	:	
ATLANTIC THEATRES CORP. OF CALIFORNIA,	:	
RKO-STANLEY WARNER THEATRES, INC.,	:	STIPULATION
WILLIAM R. FORMAN, MICHAEL R. FORMAN	:	OF FACTS
and JAMES J. COTTER,	:	
Defendants.	:	

In connection with defendants' motion to disqualify plaintiff's counsel, IT IS HEREBY STIPULATED by and between counsel for plaintiff and defendants as follows:

1. On or about December 28, 1971 defendant Cinerama, Inc. and its subsidiary, Cinerama Releasing Corporation, (hereinafter collectively referred to as "Cinerama") were served with a summons and complaint in an action instituted in the United States District Court for the Western District of New York entitled Lyell Theatre Corporation and Martina Theatre Corporation v. Loews Corporation, et al., Civ. 1971-571, alleging a conspiracy to violate the anti-trust laws of the United States. A copy of the summons and complaint is annexed as Exhibit A.

Stipulation of Facts

2. On December 29, 1971 Cinerama endeavored to retain Frank Raichle, Esq., a member of the firm of Raichle, Tucker & Moore, Esqs., Buffalo, New York, as counsel to represent them in the action. Because of a conflict of interest, Mr. Raichle was unable to represent Cinerama but suggested that they retain in his stead Manly Fleischmann, Esq., a member of the firm of Jaeckle, Fleischmann & Mugel, Esqs., Buffalo, New York, who he highly recommended as "an experienced anti-trust lawyer". Cinerama adopted this suggestion and on January 17, 1972 Mr. Fleischmann was retained by Cinerama. Annexed hereto as Exhibit B is a copy of the following correspondence evidencing this retention: letter Cinerama Releasing Corporation to Frank Raichle dated December 29, 1971; letter Frank Raichle to Harry B. Swerdlow (a member of the firm of Swerdlow, Glikbarg & Shimer, Cinerama's Los Angeles counsel) dated January 12, 1972; letter Harry B. Swerdlow to Manly Fleischmann dated January 17, 1972 and letter Manly Fleischmann to Harry B. Swerdlow dated February 9, 1972.

3. As indicated in Mr. Fleischmann's letter of February 9, 1972, in addition to his membership in the firm Jaeckle, Fleischmann & Mugel, Mr. Fleischmann is also a member of the firm of Webster Sheffield Fleischmann Hitchcock & Brookfield, New York, New York, and he alternates between the two offices.

4. In the course of its representation of Cinerama, Jaeckle, Fleischmann & Mugel filed the following documents on

Stipulation of Facts

behalf of Cinerama: (i) an answer to the complaint; (ii) answers to plaintiff's interrogatories; (iii) supplemental answers to plaintiff's interrogatories; (iv) response to plaintiff's second set of interrogatories; and (v) reply to plaintiff's first requests for admissions. Copies of these documents are annexed as Exhibit C.

5. Annexed as Exhibit D are copies of letters dated March 2, 1972; April 24, 1972; two letters dated July 6, 1972; October 12, 1972; February 12, 1973; July 24, 1973; and October 17, 1973 relating to the discovery proceedings in the action. The action is still pending.

6. Late in March, 1974, Cinerama Releasing Corporation was served with a summons and complaint in another action instituted in the United States District Court for the Western District of New York entitled Lyell Theatre Corporation v. Columbia Pictures Industries, Inc., et al, Civ. 74-132, also alleging a conspiracy to violate the anti-trust laws of the United States by all defendants. A copy of the summons and complaint is annexed as Exhibit E. Cinerama Releasing Corporation is represented by Jaeckle, Fleischmann & Mugel in this action.

7. On behalf of Cinerama Releasing Corporation Jaeckle, Fleischmann & Mugel filed an answer, a copy of which is annexed as Exhibit F. Annexed as Exhibit G are copies of the following documents: letters Jaeckle, Fleischmann & Mugel to Swerdlow, Glikbarg & Shimer dated April 4, 1974 and June 6, 1974; letter Harry B. Swerdlow to Jaeckle, Fleischmann & Mugel.

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Stipulation of Facts

dated May 31, 1974 with a copy of a letter from Cinerama Releasing Corporation to Swerdlow, Glikbarg & Shimer dated May 8, 1974 attached.

8. On September 26, 1972, and December 11, 1973, Jaeckle, Fleischmann & Mugel submitted bills for services rendered to Cinerama for the period to November 17, 1973, copies of which are annexed as Exhibit H. No bill has yet been submitted for services rendered subsequent to November 17, 1973.

9. In July, 1974, an action was instituted in the United States District Court for the Southern District of New York entitled Criterion Amusement Corp. v. Paramount Pictures Corporation, et al, 74 Civ. 3107, in which Cinerama, Inc., its wholly-owned subsidiary RKO-Stanley Warner Theatres, Inc., Cinerama Releasing Corporation, Pacific Drive-In Theatres Corp., Pacific East Theatres Corp., Cinema 5, Ltd. and Rugoff Theatres, Inc. were named, inter alia, as defendants. A copy of the complaint is annexed as Exhibit I. An answer to the complaint filed by Webster Sheffield Fleischmann Hitchcock & Brookfield on behalf of defendants Cinema 5, Ltd. and its subsidiary Rugoff Theatres, Inc. is annexed as Exhibit J. The action is still pending.

10. In August, 1974, Cinema 5, Ltd. instituted the above-captioned action entitled Cinema 5, Ltd. v. Cinerama, Inc., et al, 74 Civ. 3549. A copy of the complaint is annexed

Stipulation of Facts

as Exhibit K. Webster Sheffield Fleischmann Hitchcock & Brookfield are counsel for Cinema 5, Ltd. in this action.

Dated: New York, New York
October 16, 1974.

WEBSTER SHEFFIELD FLEISCHMANN
HITCHCOCK & BROOKFIELD

By: /s/ Donald J. Cohn
A Member of the Firm

Attorneys for Plaintiff
One Rockefeller Plaza
New York, New York 10020
Tel. No.: (212) 582-3370

PHILLIPS, NIZER, BENJAMIN,
KRIM & BALLON

By: *Simon Reiss*
A Member of the Firm

Attorneys for Defendants
40 West 57th Street
New York, New York 10019
Tel. No.: (212) 977-9700

EXHIBIT A ANNEXED TO
STIPULATION OF FACTSDISTRICT COURT OF THE UNITED STATES
WESTERN DISTRICT OF NEW YORKLYELL THEATRE CORPORATION and
MARTINA THEATRE CORPORATION,

Plaintiffs,

v.

LOEWS CORPORATION
 ✓ LOEWS DOE CORPORATION
 ✓ JOHN R. MARTINA
 ✓ MORRIS P. SLOTNICK
 ✓ JO-MOR ENTERPRISES, INC.
 ✓ COLUMBIA PICTURES INDUSTRIES, INC.
 ✓ UNITED ARTISTS CORPORATION
 ✓ NATIONAL GENERAL PICTURES CORPORATION
 ✓ PARAMOUNT PICTURES CORPORATION
 ✓ PARAMOUNT FILM DISTRIBUTING CORPORATION
 ✓ CINERAMA RELEASING CORPORATION
 ✓ METRO-GOLDWYN-MAYER, INC.
 ✓ TRANSAMERICA CORPORATION
 ✓ NATIONAL GENERAL CORPORATION
 ✓ GULF & WESTERN INDUSTRIES, INC.
 ✓ CINERAMA CORPORATION, INC.

Civil Action

No.

CIV-1971-571

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs by their undersigned attorneys complaining of defendants
state:

1. This suit is instituted and the jurisdiction of this Court is based upon the Act of July 2, 1890, C. 647, secs. 1, 2 and 4, 26 Stat. 209, 15 U.S.C. 1, 2 and 4, and the Act of October 15, 1914, C. 323, sec. 4, 38 Stat. 731, 15 U.S.C. 15, all as amended, which, by the Act of October 15, 1914, C. 323, sec. 1, 38 Stat. 730, 15 U.S.C. 12, are designated the Antitrust laws of the United States.

2. Plaintiffs are corporations organized and existing under the laws of the State of New York with a place of business at No. 95 Mortimer Street, Rochester, New York. Plaintiffs are under the common control and management of Charles V. Martina and Vincent C. Martina, both residents of

Exhibit A Annexed to Stipulation of Facts

Rochester with offices at the aforesaid address. Plaintiffs are sometimes herein referred to as "Martina Theatres".

3. Plaintiffs are in the business of operating motion picture theatres in Rochester which includes the licensing from the distributors thereof in interstate commerce of the right to exhibit feature motion pictures in their said theatres for license fees known as film rental and the exhibition of them therein to the public for an admission price.

4. The following is a list of the names, addresses and seating capacities of the theatres in Rochester so operated by plaintiffs:

Lyell Theatre Corporation

<u>Theatre</u>	<u>Address</u>	<u>Seating Capacity</u>
Paramount	95 Mortimer Street	1100
Regent	65 East Avenue	1450
Studio II	33 Clinton Street	331
Holiday Cine	Main Street East	312
Lyell	1556 Lyell Avenue	1000
Starlite Drive-In	West Henrietta Road	789 cars

Martina Theatre Corporation

1 Waring	246 Waring Street	1290
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The fees of the Paramount and Studio II are owned by plaintiff Lyell Theatre Corporation. The other theatres are operated under leases.

5. Defendant Loews Corporation is a publicly owned corporation organized and existing under the laws of the State of Delaware with a principal place of business at No. 666 Fifth Avenue, New York, New York. Part of the business of Loews is the operation either directly or through wholly-owned subsidiaries of motion picture theatres as defined above. Loews so operates approximately 115 motion picture theatres throughout the United States and is one of the largest national circuits, both in terms of the number of theatres operated, and in terms of film rental paid to the distributors.

6. Loews so operates the Loew's Theatre, located at No. 3400 Monroe Avenue, Village of Pittsford, New York. Said theatre has a seating capacity of approximately 1250. Upon information and belief, said theatre is

Exhibit A Annexed to Stipulation of Facts

under the direct management of defendant Loews Doe Corporation, a wholly-owned subsidiary of defendant Loews Corporation, organized and existing under the laws of the State of New York, with a principal place of business at No. 666 Fifth Avenue, New York, New York. Said name, Loews Doe Corporation, is fictitious and is used because plaintiffs do not now know the correct name of said subsidiary. Defendants Loews Corporation and Loews Doe Corporation are hereinafter referred to as "Loews".

7. Defendants John R. Martina and Morris P. Slotnick are residents of the City of Rochester and have offices at No. 240 East Avenue, Rochester. Upon information and belief, defendant Jo-Mor Enterprises, Inc. is a corporation organized and existing under the laws of the State of New York, owned, controlled and managed by defendants John R. Martina and Morris P. Slotnick, with an office at said No. 240 East Avenue, Rochester. Said defendants John R. Martina, Morris P. Slotnick and Jo-Mor Enterprises, Inc. are hereinafter called "Jo-Mor".

8. Jo-Mor is engaged in the business of operating motion picture theatres, as defined above, in the Rochester metropolitan area and it operates the following theatres there:

<u>Name</u>	<u>Address</u>	<u>Approximate Seating Capacity</u>
Cinema	957 Clinton Avenue S.	400
Fine Arts	702 South Avenue	200
Little	240 East Avenue	300
Stone Ridge	Stone Ridge Plaza, Greece	
Towne I	394 Jefferson Road, Henrietta	600
Towne II	394 Jefferson Road, Henrietta	600
Panorama	Panorama Plaza, Penfield	650
Stutson	Stutson Bridge Plaza	650

9. Loews and Jo-Mor are sometimes hereinafter referred to as "Exhibitor Defendants".

10. Defendant Columbia Pictures Industries, Inc. (hereinafter "Columbia") is a publicly owned corporation organized and existing under the laws of the State of Delaware with a principal place of business at No. 711 Fifth Avenue, New York, New York, and an office at 310 Delaware Avenue, Buffalo,

Exhibit A Annexed to Stipulation of Facts

New York. Part of its business is the production and distribution to theatres throughout the United States including the Rochester metropolitan area of feature motion pictures. Columbia is a major source of feature motion pictures for theatres in the United States, including those in the Rochester metropolitan area.

11. Defendant United Artists Corporation is a wholly-owned subsidiary of defendant Transamerica Corporation, a publicly owned corporation organized and existing under the laws of the State of Delaware. Defendant United Artists Corporation is organized and existing under the laws of the State of Delaware. Both said defendants have a place of business at No. 729 Seventh Avenue, New York, New York. Defendant United Artists Corporation has an office at No. 310 Delaware Avenue, Buffalo, New York. Both said defendants are hereinafter referred to as "UA". Part of the business of UA is the production and distribution to theatres throughout the United States including the Rochester metropolitan area of feature motion pictures. UA is a major source of feature motion pictures for theatres in the United States, including those in the Rochester metropolitan area.

12. Defendants Paramount Pictures Corporation and Paramount Film Distributing Corporation are corporations organized and existing under the laws of the State of Delaware and are wholly-owned subsidiaries of defendant Gulf and Western Industries, Inc., a publicly owned corporation organized and existing under the laws of the State of Delaware. Said three defendants have a principal place of business at No. 1 Gulf and Western Plaza, New York, New York. Said three defendants are hereinafter referred to as "Paramount". Paramount has an office at No. 300 Delaware Avenue, Buffalo, New York. Part of the business of Paramount is the production and distribution to theatres throughout the United States including the Rochester metropolitan area of feature motion pictures. Paramount is a major source of feature motion pictures for theatres in the United States, including those in the Rochester metropolitan area.

Exhibit A Annexed to Stipulation of Facts

13. Defendant National General Pictures Corporation is a corporation organized and existing under the laws of the State of Delaware and is a wholly-owned subsidiary of defendant National General Corporation, a publicly owned corporation organized and existing under the laws of the State of Delaware. Both said defendants are hereinafter referred to as "NGP". NGP has a principal place of business at No. 600 Madison Avenue, New York, New York. Part of its business is the production and distribution to theatres throughout the United States including the Rochester metropolitan area of feature motion pictures. NGP is a major source of feature motion pictures for theatres in the United States, including those in the Rochester metropolitan area.

14. Defendant Cinerama Releasing Corporation is a corporation organized and existing under the laws of the State of New York and is a wholly-owned subsidiary of defendant Cinerama, Inc., a corporation organized and existing under the laws of the State of New York. Both said corporations are hereinafter referred to as "Cinerama". Cinerama has a principal place of business at No. 1345 Avenue of the Americas, New York, New York. Defendant Cinerama Releasing Corporation has an office at No. 300 Delaware Avenue, Buffalo, New York. Part of the business of Cinerama is the production and distribution to theatres throughout the United States including the Rochester metropolitan area of feature motion pictures for theatres in the United States, including those in the Rochester metropolitan area.

15. Defendant Metro-Goldwyn-Mayer, Inc. (hereinafter "MGM") is a publicly owned corporation organized and existing under the laws of the State of Delaware with a principal place of business at No. 1350 Avenue of the Americas New York, New York. Part of its business is the production and distribution to theatres throughout the United States including the Rochester metropolitan area of feature motion pictures. MGM is a major source of feature motion pictures for theatres in the United States, including those in the Rochester metropolitan area.

Exhibit A Annexed to Stipulation of Facts

16. Columbia, UA, Paramount, NGP, Cinerama and MGM are herein-after sometimes referred to as "Distributor Defendants".

17. The business of producing, distributing and exhibiting feature motion pictures as engaged in by the parties hereto is a part of the commerce between the several states of the United States.

18. The feature motion pictures distributed by the Distributor Defendants have, during the past four years, shared more than half of the total box office market for all feature motion picture films distributed in the United States during said period. It is impossible for any exhibitor to compete in his area without access to the films of the Distributor Defendants.

19. Commencing at a date presently unknown to plaintiffs but which antedated January 1, 1969, defendants have combined, conspired and agreed with each other and amongst themselves in violation of the Antitrust laws to restrain trade and commerce in the business of distributing and exhibiting feature motion pictures with the purpose and effect of damaging and destroying the business of plaintiffs in and about Rochester, New York and preferring, aiding and discriminating in favor of the business of defendants Loews and Jo-Mor in Rochester, New York and to create a monopoly in defendants Loews and Jo-Mor in the business of licensing and exhibiting feature motion pictures in and around Rochester, New York and, in pursuance thereof, have committed the following acts:

(a) The Distributor Defendants have refused to license their feature motion pictures to plaintiffs for first run showing in the Rochester area except for such motion pictures as were refused and rejected by defendants Loews and Jo-Mor and instead have licensed and offered to license said feature motion pictures to defendants Loews and Jo-Mor to the exclusion of plaintiffs for first run showing in said area.

(b) The Distributor Defendants have failed and refused to license their feature motion pictures to plaintiffs for subsequent run showing in the Rochester area following the runs of said pictures first run in the theatres of Loews and Jo-Mor and instead have licensed and offered to license

Exhibit A Annexed to Stipulation of Facts

said pictures for such subsequent runs to defendants Loews and Jo-Mor to the exclusion of plaintiffs.

(c) The Distributor Defendants have agreed with defendants Loews and Jo-Mor in relation to feature motion pictures licensed to them that said pictures would be played in the theatres of Loews and Jo-Mor exclusively in the Rochester area, even though said theatres did not and could not, by reason of their isolated geographic locations, serve more than a fraction of the population of said area, and did so license said pictures, with the result that plaintiffs were unable to license said pictures in theatres of theirs remote from and non-competitive to the theatres of defendants Loews and Jo-Mor for simultaneous exhibition, thus depriving a substantial portion of the population of the Rochester area of the opportunity of seeing said pictures on first run and reducing the total box office business of all pictures so licensed in the Rochester area to plaintiffs' damage.

(d) Upon information and belief, the Distributor Defendants have discriminated against plaintiffs in connection with terms of film rental, licensing their pictures to defendants Loews and Jo-Mor at lower percentages of gross receipts than plaintiff was obliged to pay for those few pictures that were offered to them for 1

(e) Upon info: id belief, Distributor Defendants have discriminated against plaintiff in favor of defendants Loews and Jo-Mor in other ways which plaintiff will determine until after pre-trial discovery has been completed.

20. Said wrongful acts of defendants have damaged plaintiffs in their business in the following manners:

(a) Since plaintiffs were denied access to first and subsequent run showings of the feature motion pictures of Distributor Defendants, the gross receipts of plaintiffs' theatres were substantially reduced in comparison with the gross receipts of the theatres of defendants Loews and Jo-Mor. Upon information and belief, in each of the three years 1969, 1970 and 1971, the theatres of defendants Loews and Jo-Mor have had gross receipts of

Exhibit A Annexed to Stipulation of Facts

approximately \$425 per seat while the theatres of plaintiffs have had gross receipts of approximately \$275 per seat. As a result, the theatres of plaintiffs have lost gross receipts in each of said three years in the amount of approximately \$700,000 and have lost profits in each of said three years in the amount of approximately \$450,000, for a three year total of \$1,350,000. Plaintiffs cannot determine the exact figures until discovery has been completed.

(b) Plaintiffs believe and allege that, by reason of the wrongful acts described in subparagraph "(c)" of the preceding paragraph, the gross receipts of all theatres in the Rochester area, including plaintiffs' theatres, have been reduced by a minimum of 25%, thus increasing the damage suffered by plaintiffs described in subparagraph "(a)" of this paragraph by 25%.

(c) By reason of plaintiffs' said loss of gross receipts as described above, the concession income of plaintiffs' theatres has been reduced in said three years in an amount which plaintiffs believe and allege was not less than \$250,000 and plaintiffs have thereby lost profits in the amount of not less than \$75,000 in said three year period.

(d) By reason of the wrongful acts described in the preceding paragraph, plaintiffs have been obliged to pay a higher percentage of their gross receipts as film rental than they would have been obliged to pay if said wrongful acts had not occurred, in an amount which plaintiffs cannot determine until after discovery has been completed.

(e) Plaintiffs have been further damaged by reason of the wrongful acts referred to in subparagraph "(c)" of the preceding paragraph in an amount which plaintiffs cannot determine until after discovery has been completed.

21. Defendants are continuing the wrongful acts herein described and upon information and belief will continue them to the damage of plaintiffs and the public until they are enjoined and restrained therefrom by order of this Court.

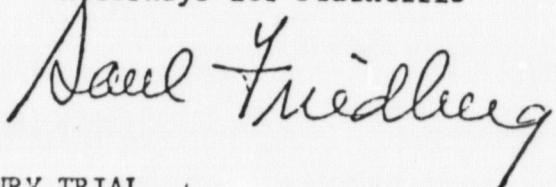
Exhibit A Annexed to Stipulation of Facts

WHEREFORE, plaintiffs pray judgment against defendants jointly and severally for three times the damages so suffered by them, which at this time are estimated to be not less than \$5,287,500, together with their counsel fees, costs and disbursements, and decreeing the dissolution and termination of the illegal conspiracy, monopoly and attempt to monopolize herein alleged and the dissipation of the results thereof.

DAVID M. LEVY
45 Exchange Street
Rochester, New York 14614
(716) 232-1980

SAUL FRIEDBERG
342 Madison Avenue
New York, New York 10017
(212) 986-9779

Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs respectfully demand a trial by jury of this action.

EXHIBIT B-1 ANNEXED TO
STIPULATION OF FACTS

CINERAMA RELEASING CORPORATION

HEAD OFFICE: 1345 AVENUE OF THE AMERICAS
NEW YORK, N.Y. 10019, TELEPHONE (212) 581-5850
CABLE: CINERAMA NEW YORK TELEX 127913 HCA INT'L 224427BENJAMIN ROCKMORE
GENERAL COUNSEL

December 29th 1971

Frank Raichel Esq.,
Raichle, Tucker & Moore Esqs.,
10 Lafayette Street
Buffalo, New York

Dear Mr. Raichle:

re: Lyell Theatre Corp. et ano.
vs. Loews Corp.

Harry Swerdlow has asked me to forward to you the enclosed Summons and Complaint which was served on Cinerama Releasing Corp and Cinerama, Inc., in Buffalo yesterday December 28th 1971. This is being sent to you in accordance with his telephone conversation with you.

Very truly yours,

/s/ Benjamin Rockmore

BR:maja-enc.

c.c. Harry Swerdlow

EXHIBIT B-2 ANNEXED TO
STIPULATION OF FACTS

RAICHLÉ, BANNING, WEISS & HALPERN

ALGER A. WILLIAMS
COUNSEL

FRANK G. RAICHLER
DERICK C. BANNING
ARNOLD WEISS
DAVID C. DIEDENDORF
RALPH L. HALPERN
R. WILLIAM STEPHENS

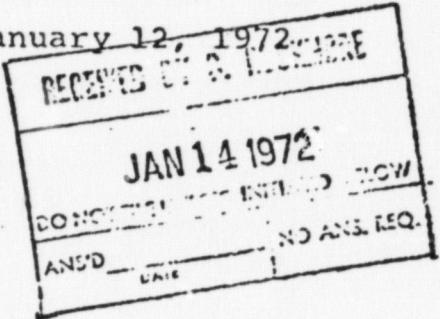
852-7587
AREA CODE 716

LAW OFFICES

10 LAFAYETTE SQUARE

BUFFALO, NEW YORK 14203

Harry Swerdlow, Esq.
c/o Benjamin Rockmore, Esq.
Cinerama Releasing Corporation
1345 Avenue of the Americas
New York, New York 10019



Re: Lyell Theatre Corporation, et al.
v. Loews Corporation, et al.

Dear Mr. Swerdlow:

Following our telephone conversation of the other day I have obtained a 20-day extension on behalf of the defendants within which to move or answer, as they may be advised. I have appeared in our firm name and when the matter of appearance is resolved, a substitution can be effected.

I regret the embarrassment apropos to our inability to stick with you throughout this litigation. However, I strongly suggest and highly recommend Mr. Manly Fleischmann of the firm of Jaeckle, Fleischmann & Mugel, 720 Liberty Bank Building, Buffalo, New York 14202, whose telephone number is (716) 856-0600, to represent your clients and those of Mr. Lipton. Mr. Fleischmann is an experienced anti-trust lawyer. He is a member of the American College of Trial Lawyers, and is highly regarded for his ability and experience. He also has a sizeable law shop to back him up. We have worked together in other cases.

If you desire any further information at this point, please let me know.

Very truly yours,

FGR-HG

EXHIBIT B-3 ANNEXED TO
STIPULATION OF FACTS

January 17, 1972

Manly Fleischmann, Esq.
Jaeckle, Fleischmann & Mugel
720 Liberty Bank Building
Buffalo, New York 14202

Re: Lyell Theatre Corporation, et al. v. Loews Corporation, et al.

Dear Mr. Fleischmann:

This is to confirm our telephone conversation today in which we retained you to represent Cinerama, Inc. and Cinerama Releasing Corporation and, on behalf of Mr. Harold Lipton, we retained you to represent National General Pictures Corp. and National General Corporation as defendants in the Lyell Theatre litigation. It is our understanding that Mr. Raichle has transmitted to you a copy of the complaint and that he has secured a 20-day extension on behalf of all defendants in which to move or answer.

This is to confirm further our advice that both Cinerama defendants were served in Buffalo on December 28, 1971. By copy of this letter, I am requesting Mr. Lipton to advise you of the dates of service on the two National General defendants. As I indicated on the telephone, Cinerama Releasing Corporation (CRC) is a wholly owned subsidiary of Cinerama, Inc. and is engaged in the business of distributing feature motion pictures in the United States. By copy of this letter, I am asking Mr. Lipton to confirm to you, what I believe to be the fact, that National General Pictures Corp. (NGPC)

Manly Fleischmann, Esq.

-2-

January 17, 1972

is a wholly owned subsidiary of National General Corporation. Simply as a matter of additional information, Cinerama, Inc. has a subsidiary, RKO-Stanley Warner Theatres, Inc. which operates theatres principally in the New York, New Jersey, Pennsylvania and New England areas and National General Corporation through various subsidiaries operates theatres in various parts of the United States. I doubt, but I do not know definitely, whether either of these defendants operates theatres in the Buffalo-Rochester area but will check and confirm this to you promptly.

As I advised you further, Benjamin Rockmore is general counsel of Cinerama, Inc., in New York and will be communicating with both of us regarding the securing of any necessary information and the production of documents. CRC has a film exchange office in Buffalo and I presume, although I do not know, that NGPC has an exchange in this area.

For your assistance, I am enclosing herewith a copy of a suggested answer on behalf of Cinerama, Inc. and CRC.

I am looking forward to working with you and meeting you in person at an early date.

Sincerely,

Harry B. Swerdlow

HBS:jl
Encl.

cc: Harold Lipton, Esq.
Benjamin Rockmore, Esq.
Mr. Joseph M. Sugar
Mr. Harry Buxbaum

WRF

EXHIBIT B-4 ANNEXED TO
STIPULATION OF FACTS

JAECKLE, FLEISCHMANN & MUGEL

ATTORNEYS AT LAW

700 LIBERTY BANK BUILDING BUFFALO, NEW YORK 14202

716-856-0600

February 9, 1972

Harold A. Lipton,
First Vice President
National General Corporation
One Carthay Plaza
Los Angeles, California 90048

Harry B. Swerdlow, Esq.
Swerdlow, Glikbarg & Shimer
544 United California Bank Bldg.
9601 Wilshire Blvd.
Beverly Hills, California 90210

RE: Lyell v. National General, et al.

Gentlemen:

As you already know, we are happy to represent four defendants in the action brought in the U. S. District Court in Rochester by Lyell etc. In the interest of saving time, this letter is addressed to you jointly. It seems to me advisable in any event that you should both be kept informed of our activities on your behalf.

I will be away from the office a good part of the time for the next two weeks, although I will be available at my New York City office, Webster, Sheffield, Fleischmann, Hitchcock & Brookfield, One Rockefeller Plaza, New York, New York 10020 - Telephone No. 212-582-3370 until Thursday afternoon of this week; again on Thursday, February 17th and Thursday February 24th. I will be here in the Buffalo Office on Friday, February 18th and again on Friday February 25th. Thereafter I will resume my regular weekly routine, which usually finds me in New York on Tuesday, Wednesday and Thursday, and in Buffalo the rest of the week.

Exhibit B-4 Annexed to Stipulation of Facts

Harold A. Lipton,
First Vice President

Page -2-

Harry B. Swerdlow, Esq.

February 9, 1972

My brother and partner, Adelbert Fleischmann will be my alter ego in this case, and he will be able to furnish you with any information on the cases at any time.

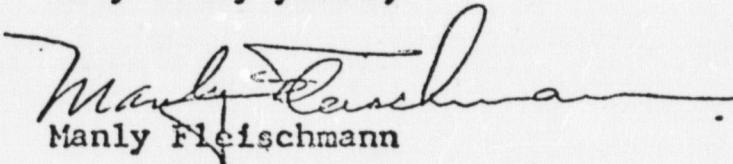
We have met at length with Frank Raichle. We plan to serve our answers on February 15th, and at the same time notice the depositions of Messrs. Martina and other officers of the plaintiffs at Rochester. We do not wish to sacrifice our priority of depositions, so we will make the notices returnable early, with the expectation that they will be postponed for some period of time.

As to the draft answer of Cinerama, we consider it generally satisfactory, but will change it in a few respects, particularly the allegation on information and belief that National General Corporation does business in New York State. Acting upon Mr. Lipton's instructions in his letter of January 31st, we are contesting this allegation and are raising a defense of lack of jurisdiction with respect to that defendant.

The enclosed memorandum by one of our associates indicates that it is not necessary to raise this question by a motion. However, we would appreciate a full statement of facts on this subject so that we can be prepared to defend our position whenever necessary.

We assume that the answer of National should otherwise be substantially similar to the answer of Cinerama.

Very truly yours,


Manly Fleischmann

MF/lg

EXHIBIT C-1 ANNEXED TO
STIPULATION OF FACTS

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

LYELL THEATRE CORPORATION and
MARTINA THEATRE CORPORATION,

Plaintiffs

vs.

LOEWS CORPORATION
LOEWS DOE CORPORATION
JOHN R. MARTINA
MORRIS P. SLOTNICK
JO-MOR ENTERPRISES, INC.
COLUMBIA PICTURES INDUSTRIES, INC.
UNITED ARTISTS CORPORATION
NATIONAL GENERAL PICTURES CORPORATION
PARAMOUNT PICTURES CORPORATION
PARAMOUNT FILM DISTRIBUTING CORPORATION
CINERAMA RELEASING CORPORATION
METRO-GOLDWYN-MAYER, INC.
TRANSAMERICA CORPORATION
NATIONAL GENERAL CORPORATION
GULF & WESTERN INDUSTRIES, INC.
CINERAMA, INC.

Civil Action
No. Civ. 1971-571

Defendants.

ANSWER OF DEFENDANTS
CINERAMA, INC. and
CINERAMA RELEASING
CORPORATION

Defendants, Cinerama, Inc. and Cinerama Releasing Corporation, by their attorneys, Jaeckle, Fleischmann & Mugel, for their answer to plaintiffs' complaint herein:

FIRST: Deny each and every allegation contained in paragraph numbered 1 of plaintiffs' complaint, except to the extent that defendants recognize that plaintiffs seek to invoke the jurisdiction of this Court under and pursuant to the statutes referred to in said paragraph.

SECOND: Defendants lack knowledge or information sufficient to form a belief as to the allegation contained in paragraph numbered 2 of plaintiffs' complaint.

Exhibit C-1 Annexed to Stipulation of Facts

THIRD: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered 3 and 4 of plaintiffs' complaint, except to the extent that defendants are informed and believe that there are motion picture theatres with the names listed in paragraph numbered 4 of the plaintiffs' complaint located at the places listed in paragraph numbered 4 of plaintiffs' complaint.

FOURTH: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered 5 and 6 of plaintiffs' complaint, except that defendants are informed and believe that there is a motion picture theatre known as Loew's Theatre located in Pittsford, New York.

FIFTH: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered 7, 8 and 9 of plaintiffs' complaint, except defendants are informed and believe that there are motion picture theatres known by the names listed in paragraph numbered 8 of plaintiffs' complaint located at the places listed in paragraph numbered 8 of plaintiffs' complaint.

SIXTH: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered 10 through 13, 15 and 16 of plaintiffs' complaint, except that defendants are informed and believe that Columbia Pictures Industries, Inc., United Artists Corporation, Transamerica Corporation, Paramount Pictures Corporation, Paramount Film Distributing Corporation, National

Exhibit C-1 Annexed to Stipulation of Facts

General Pictures Corporation and Metro-Goldwyn-Mayer, Inc. are all corporations engaged, to some extent, in the production and/or distribution of motion pictures.

SEVENTH: Defendants admit only so much of paragraph numbered 14 of plaintiffs' complaint as alleges that Cinerama Releasing Corporation is a corporation organized and existing under the laws of the State of New York, is a subsidiary of Cinerama, Inc., a New York corporation, with its principal place of business at 1345 Avenue of the Americas, New York, New York, and that Cinerama Releasing Corporation maintains an office for the conduct of its business at 300 Delaware Avenue, Buffalo, New York, and is engaged in the business of distributing motion pictures in various areas including Rochester, New York. As previously noted in this paragraph of defendants' Answer, except to the extent admitted above, defendants deny each and every allegation contained in paragraph numbered 14 of plaintiffs' complaint.

EIGHTH: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered 17 and 18 of plaintiffs' complaint.

NINTH: Defendants deny each and every allegation contained in paragraphs numbered 19, 20 and 21 of plaintiffs' complaint and each and every subpart and/or subparagraph thereof and defendants further deny each and every allegation of plaintiffs' complaint not hereinbefore admitted, denied or otherwise controverted herein.

*Exhibit C-1 Annexed to Stipulation of Facts*FOR A SECOND DEFENSE AGAINST
PLAINTIFFS' COMPLAINT

TENTH: Defendants allege that plaintiffs' complaint fails to state a claim against either of the answering defendants upon which relief can be granted,

FOR A SEPARATE, FURTHER AND AFFIRMATIVE DEFENSE TO THE COMPLAINT OF THE PLAINTIFFS HEREIN, THE DEFENDANTS, CINERAMA, INC. AND CINERAMA RELEASING CORPORATION, ALLEGE UPON INFORMATION AND BELIEF:

ELEVENTH: That the alleged cause or causes of action, if any, asserted by plaintiffs in their complaint herein, not having accrued within the four years immediately preceding the commencement of this action are barred by the Statute of Limitations as set forth in section 15b of Title 15, United States Code.

WHEREFORE, defendants, Cinerama, Inc., and Cinerama Releasing Corporation, ask judgment against the plaintiffs herein dismissing the complaint as to them and each of them, together with all costs and expenses incurred herein and for such other and further relief as to this Court seems just and proper in the premises.

Jaeckle, Fleischmann & Mugel
700 Liberty Bank Building
Buffalo, New York 14202

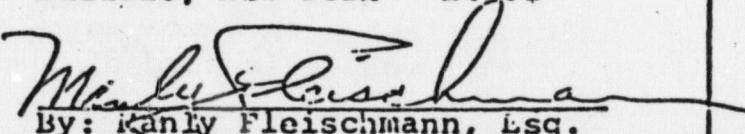

By: Michael Fleischmann, Esq.
Attorneys for the Defendants,
Cinerama, Inc. and Cinerama
Releasing Corporation

EXHIBIT D-1 ANNEXED TO
STIPULATION OF FACTS

Ex D - 1

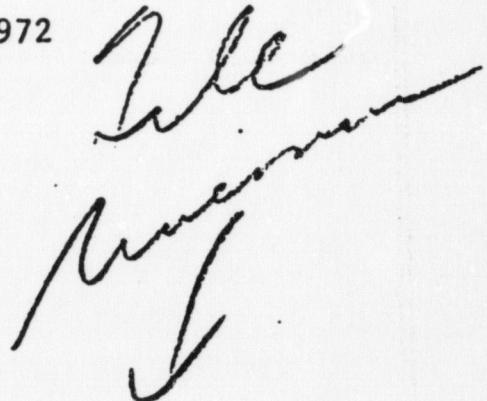
JAECKLE, FLEISCHMANN & MUGEL

ATTORNEYS AT LAW

700 LIBERTY BANK BUILDING BUFFALO, NEW YORK 14202

716-856-0600

March 2, 1972



Harry B. Swerdlow, Esq.
Swerdlow, Glikbarg & Shimer
544 United California Bank Bldg.
9601 Wilshire Boulevard
Beverly Hills, California 90210

Re: Lyell Theatre Corporation
and Martina Theatre Corporation
v. Cinerama, Inc., Cinerama
Releasing Corporation, et al.

Dear Mr. Swerdlow:

Enclosed find a copy of the Answer we served and filed on behalf of Cinerama, Inc. and Cinerama Releasing Corporation.

Pursuant to your expressed preference with regard to our participation in depositions, we have conferred with Frank Raichle, Esq. and will be following his lead with respect thereto. As of this date, he has not finalized his thinking with regard to depositions and discovery.

However, a deposition has been noticed by counsel representing defendants John R. Martina, Morris P. Slotnick and Jo-Mor Enterprises, Inc. to take the testimony of Charles and Vincent Martina on March 13, 1972. We intend to attend this deposition as interested observers.

Before we can properly and adequately proceed any further with a meaningful defense to plaintiffs' action, we are in need of a great deal of information

*Copy to B. Raichle
3/1/72*

Exhibit D-1 Annexed to Stipulation of Facts

Harry B. Swerdlow, Esq.
Page Two
March 2, 1972

concerning the nature and extent of the activities of Cinerama, Inc. and Cinerama Releasing Corporation and in particular their activities in the area to which this action pertains.

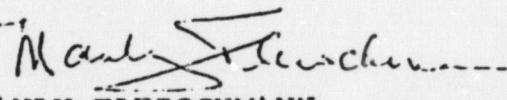
We need all documents, records, correspondence and materials relative to the activities of Cinerama, Inc. and Cinerama Releasing Corporation in the Monroe County, New York area (which includes Rochester and its suburbs) for a period of at least six years prior to the commencement of the instant action. These materials should include, among other relevant items, copies of certificates of incorporations, by-laws, leasing agreements for features and non-features, procedures and agreements with regard to first and second runs, statements or documents relating to the manner of offering films for distribution to exhibitors, bidding procedures, invitations to bid and those invited to bid, contracts and other agreements relating to business in the instant area, accounts of earnings with respect to activities in the instant area, all correspondence, memoranda and the like relative to business conducted in the instant area and any explanations you feel would be helpful to a full understanding of the facts underlying the instant action.]

[Furthermore, it would be extremely helpful if you could advise us as to knowledgeable individuals we could contact and confer with in your Buffalo office and New York City office.]

Because this information provides the necessary basis for conduct of depositions and discovery, we would appreciate it if you could fill our requests as soon as possible.

We will continue to keep you advised of the status of this action.

Very truly yours,


MANLY FLEISCHMANN

bak
Encl.

EXHIBIT D-2 ANNEXED TO
STIPULATION OF FACTS

JAECKLE, FLEISCHMANN & MUGEL

ATTORNEYS AT LAW

700 LIBERTY BANK BUILDING BUFFALO, NEW YORK 14202

716-856-0600

April 24, 1972

Harry B. Swerdlow, Esq.
Swerdlow, Glikbarg & Shimer
544 United California Bank Building
9601 Wilshire Boulevard
Beverly Hills, California 90210

Harold A. Lipton, Esq.
First Vice President
National General Corporation
One Carthay Plaza
Los Angeles, California 90048

Re: Lyell Theatre Corporation
vs. Cinerama, Inc., National
General Pictures Corporation, et al.

Gentlemen:

In correspondence with us, you have both suggested that we allow the attorneys for the "major distributors and exhibitors" to take the lead, with a view to holding down legal fees. We have tried to do this to date, although such instructions are easy to state as a principle, but difficult to apply and provide proper protection for your various interests. This comes into focus now, because we have received the enclosed Interrogatories, which each defendant will have to answer unless moves are made against the demands.

As you know, under Federal Rules 33(a) and 26(c) we must either answer the Interrogatories or file objections within 30 days. (We received the Interrogatories on April 21st.)

As an alternative, we may answer only those Interrogatories we feel are proper together with our objections to the remainder; the plaintiff would then have to move under Rule 37(a) compelling answer. This is the procedure usually employed.

Exhibit D-2 Annexed to Stipulation of Facts

Harry B. Swerdlow, Esq.
Harold A. Lipton, Esq.

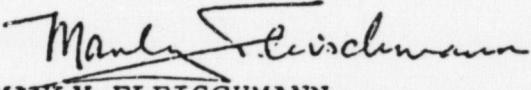
April 24, 1972

-2-

Because of your instructions, we have not examined the Interrogatories in any detail and cannot express any opinion as to cutting them down, although they seem needlessly onerous.

We would like to have very specific instructions from you as to how we should proceed. Our preference would be that you prepare answers to the Interrogatories together with any statements as to why you object to certain items and forward them to us for service. It would take a tremendous amount of time and effort for us to attempt to assemble answers either by correspondence or personal contact with your representatives. In any event, we feel sure that we can obtain extensions of time to file the answers, but would like to have your instructions at the earliest possible moment.

Very truly yours,


MANLY FLEISCHMANN

MF:lg
Enclosure

EXHIBIT D-3 ANNEXED TO
STIPULATION OF FACTS

July 6, 1972

Manly Fleischmann, Esq.
Jaekle, Fleischmann & Mugel
700 Liberty Bank Building
Buffalo, New York 14202

Re: CRC adv. Lyell

Dear Mr. Fleischmann:

I am enclosing herewith copies of the following documents which may be made available to plaintiffs' counsel for inspection and copying in response to the interrogatories:

1. All license contracts on motion pictures distributed by Cinerama Releasing Corporation, first-run Rochester.
2. All cut-off cards on first-run theatres, Rochester.
3. All bidding correspondence with first-run exhibitors, Rochester.
4. All other correspondence with first-run Rochester exhibitors, including plaintiffs.

Sincerely,

AA:le
encls.

Allan Albala

EXHIBIT D-4 ANNEXED TO
STIPULATION OF FACTS

July 6, 1972

Manly Fleischmann, Esq.
Jacckle, Fleischmann & Mugel
700 Liberty Bank Building
Buffalo, New York 14202

Re: CRC aov. Lyell

Dear Mr. Fleischmann:

I am enclosing herewith an original and one copy of answers of defendant Cinerama Releasing Corporation to plaintiffs' interrogatories. Under separate cover, I am forwarding copies of the following documents which may be made available for plaintiffs' inspection and copying:

1. Cut-off cards covering first-run theatres in the Rochester area.
2. License agreements covering first-run Rochester exhibition of motion pictures distributed by Cinerama Releasing Corporation.
3. Bidding correspondence with Rochester exhibitors.
4. Other correspondence with exhibitors, including plaintiffs.

Exhibit D-4 Annexed to Stipulation of Facts

Manly Fleischmann, Esq.
Jaeckle, Fleischmann & Mugel
July 6, 1972
Page 2

I believe all of the above documentation will supply the information requested by the interrogatories which are not otherwise specifically set forth in the answers.

Sincerely,

AA:le
encls.

Allan Albala

EXHIBIT D-5 ANNEXED TO
STIPULATION OF FACTS

JAECKLE, FLEISCHMANN & MUGEL

ATTORNEYS AT LAW

700 LIBERTY BANK BUILDING BUFFALO, NEW YORK 14202

716-656-0600

October 12, 1972

John J. Jaekle
Swerdlow, Glikbarg & Shimer
A Professional Corporation
Allan Albala, Esq.
544 United California Bank Bldg.
9601 Wilshire Boulevard
Beverly Hills, California 90210

Re: Lyell Theatre Corporation and
Martina Theatre Corporation vs.
Cinerama Releasing Corporation
et al. U.S.D.C., W.D.N.Y.
Civil No. 1971-571

Dear Mr. Albala:

We have received a receipt correspondence from plaintiffs' counsel Saul Friedberg wherein it is requested that we furnish him some items of information either referred to and not included in our answers to his interrogatories or wherein he claims our answers are incomplete. These items are as follows:

(1) Our answer to Interrogatory No. 8 refers to a Schedule A, which was to be attached. This schedule was to contain the names of our branch managers in various areas of the United States who may have dealt with representatives of Loews Corporation in connection with licensing of a motion picture to a theatre in a particular area. This Schedule A was not attached and plaintiff has requested same.

(2) Plaintiffs' counsel points to categories of information missing with respect to various pictures and

Exhibit D-5 Annexed to Stipulation of Facts

Swerdlow, Glikbarg & Shimer
Page Two
October 12, 1972

has prepared a schedule which we have attached particularizing the missing information on a per picture basis.

(3) Plaintiffs' counsel notes that Interrogatory No. 17 is not answered separately for each exhibitor and he wants to know whether the answer applies to all three exhibitors equally and, if not, to which exhibitor the answer applies.

Plaintiffs' counsel further advises that he intends to seek a ruling on our objections to interrogatories "in due course".

Would you kindly provide the materials requested or note any objections in the form of additions to answers to interrogatories.

In addition, we have received a copy of requests for answers to interrogatories served on plaintiffs by defendants John R. Martina, Morris P. Slotnick and Jo-Mor Enterprises, Inc. We are enclosing a copy of these requests for your information.

[X] We feel that our defense must now proceed and that we too should prepare and serve requests for answers to interrogatories. We would like to know your intentions in this respect. [X]

We will be looking forward to hearing from you in the near future.

Very truly yours,

JAECKLE, FLEISCHMANN & MUGEL

Brian J. Troy
BY: BRIAN J. TROY

BJT:bak

EXHIBIT D-6 ANNEXED TO
STIPULATION OF FACTSJAECKLE, FLEISCHMANN & MUGEL
ATTORNEYS AT LAW

700 LIBERTY BANK BUILDING BUFFALO, NEW YORK 14202

716-856-0600

cir QRC
atv
Lyell
(x)-6

February 12, 1973

Harry B. Swerdlow, Esq.
Swerdlow, Glikbarg & Shimer
544 United Bank Building
9601 Wilshire Boulevard
Beverly Hills, California 90210

Re: Lyell Theatre Corporation et al.
vs. Loews Corporation, et al.
Litigation - United States
District Court, W.D.N.Y.

Dear Mr. Swerdlow:

In response to your recent inquiry, we have received no papers nor have we received any notice of activity for the past few months. Defense counsel for other codefendants have experienced the same inactivity.

The last action we have noted is our filing and service of Cinerama's supplemental answers to plaintiffs' interrogatories.

As you are aware, prior to the preparation of these supplemental answers, we contacted Mr. John Roberts of your local Buffalo office. Mr. Roberts was of significant help in explaining some of the notations appearing on your cut-off cards. It appears that Mr. Roberts may be able to give us similar assistance in the future.

We are advised that plaintiffs' motion to compel defendants Metro-Goldwyn-Mayer, Inc., United Artists Corporation, Paramount Pictures Corporation and Columbia Pictures Industries, Inc. to answer plaintiffs' interrogatories has been adjourned generally and we have not received any notification as to a new date for argument.

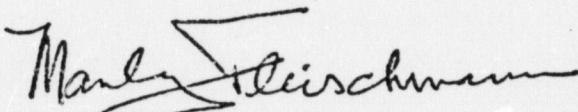
Exhibit D-6 Annexed to Stipulation of Facts

Harry B. Swerdlow, Esq.
Page Two
February 12, 1973

As to the initiation of defense discovery proceedings, counsel for Loews Corporation advises that he has been instructed to wait for other defendants to initiate same. Pursuant to your correspondence of October 19th, 1972, we are awaiting receipt of answers to Martina's interrogatories before contacting you with respect to initiating our defense discovery.

We will keep you informed as this case progresses.

Very truly yours,


MANLY FLEISCHMANN

bak

EXHIBIT D-7 ANNEXED TO
STIPULATION OF FACTS

C. 1. D.

JAECLE, FLEISCHMANN & MUGEL

ATTORNEYS AT LAW

700 LIBERTY BANK BUILDING BUFFALO, NEW YORK 14202

716-856-0600

July 24, 1973

Harry B. Swerdlow, Esq.
Swerdlow, Glikbarg & Shimer
544 United California Bank Building
9601 Wilshire Boulevard
Beverly Hills, California 90210

Re: Lyell Theatre Corporation
et al. vs. Loews Corporation,
et al. Litigation - U.S.D.C.,
W.D.N.Y.

Dear Mr. Swerdlow:

After receipt of your correspondence, discussions were had relative to our attendance at these first noticed depositions relative to the above referenced action. For a number of reasons we decided that, although the substance of the depositions might be of no significance, our attendance at these depositions would be the more prudent course of action.

These depositions, if all counsel followed the general practice in the area, would provide the first opportunity of this litigation for all counsel to meet. In addition, it was somewhat befuddling that the first noticed depositions by plaintiffs' counsel involved non-party witnesses and that these witnesses were corporations operating a television and radio station respectively. The relevance of these depositions within the confines of an extremely liberal reading of plaintiffs' complaint was difficult to discern. Thus, we attended the depositions held pursuant to plaintiffs' notice in Rochester, New York on Monday, July 16th, 1973 and on Wednesday, July 18th, 1973.

Exhibit D-7 Annexed to Stipulation of Facts

Harry B. Swerdlow, Esq.
Page Two
July 24, 1973

For the 16th, the notice related to WHEC, INC. and the testimony of that corporation was taken via its General Sales Manager, Alfred Stephen Kronquest and its Business Manager, Fred D. Pestorius. In addition to the two witnesses, appearances were noted as follows:

- (1) Saul Friedberg, Esq. - attorney for plaintiffs;
- (2) Arthur P. Ralph, Esq. - attorney for WHEC, INC.;
- (3) David C. Diefendorf, Esq. - of counsel for Raichle, Banning, Weiss & Halpern - attorneys for defendants United Artists Corporation, Paramount Pictures Corporation, Paramount Film Distributing Corporation, Columbia Pictures Industries, Inc.
- (4) Elliott Horton, Esq. - of counsel for Harris, Beach and Wilcox - attorneys for defendants John R. Martina, Morris P. Slotnick and Jo-Mor Enterprises, Inc.;
- (5) Beryl Nusbaum, Esq. - of counsel for Woods, Oviatt, Gilman, Sturman & Clarke - attorneys for defendants Loews Corporation and Loews Doe Corporation; and
- (6) This writer - of counsel for Jaeckle, Fleischmann & Mugel - attorneys for defendants Cinerama Releasing Corporation, Cinerama Corporation, Inc., and National General Pictures Corporation.

A. The first witness sworn was Alfred Stephen Kronquest, a man of good appearance in his late thirties or early forties, who is presently the General Sales Manager for WHEC - T.V., a station operated by WHEC, INC.

Mr. Kronquest has been the General Sales Manager for WHEC - T.V. since August 1st, 1970. He previously held the position of Local Sales Manager with the station from June of 1965 until succeeding the station's previous General Sales Manager, John J. Cody, when the latter

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retired after holding the position for approximately ten years. Mr. Friedberg sought and received information as to Mr. Cody's present whereabouts and indicated that he might wish to depose Mr. Cody on some unannounced date in the future.

Cutting through most of the totally irrelevant and inconsequential testimony, Mr. Kronquest's testimony concerning rate schedules, reciprocal trade agreements and short term local contracts as they relate to the T.V. stations' advertising and, in particular, the advertising of Loews Corporation, formed the crux of the testimony and was dwelled upon by Mr. Friedberg ad nauseam.

WHEC-T.V. is a CBS affiliate and one of four local Rochester stations. In addition to WHEC, these stations are WROC an NBC affiliate, WOKR an ABC affiliate, and WXI, a nonadvertising educational station.

WHEC - T.V. has a "reciprocal trade agreement" also referred to as a "trade agreement" or "trade-out" agreement with Loews Corporation and had this same agreement with WHEC prior to the time Mr. Kronquest became the station's General Sales Manager. This agreement appears in letter form, on Loews Theatre stationery, dated April 19th, 1967, and was produced at the examination and marked as plaintiffs' exhibit 1. A copy of this letter is attached hereto. In view of the fact that this agreement was entered into in 1967 and that the witness was not the General Sales Manager at that time, he had no personal knowledge of the discussion or negotiations culminating in the instant letter agreement. However, he acknowledged that the agreement is still operative, although he didn't know if it had been amended or formally renewed since 1967.

The "reciprocal trade agreement" obligates WHEC - T.V. to provide seven spots, each spot of either ten second, twenty second or one minute duration, as determined by WHEC, during each week of the agreement's 52 week period for purposes of broadcasting announcements on behalf of Loews Theatre, Rochester and/or Loews Hotels. In return .

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for these 364 spot announcements, Loews is obligated to provide a \$1,000.00 room accommodation credit to WHEC - T.V. to be used by station executive personnel in Loews Hotels in New York City, Chicago and San Francisco, to make available 1000 guest tickets to Loews Theatre, Rochester, to exhibit at its Loews Theatre, Rochester promotional trailers on behalf of WHEC - T.V. and to make Loews Theatre, Rochester available to WHEC - T.V. for use in promoting the station four (4) times during the year.

In its performance of its obligations under the agreement, WHEC - T.V.'s experience is that of its broadcasts for Loews, 50% of the announcements advertise Loews Hotels and 50% advertise coming motion picture attractions. All announcements, according to Mr. Kronquest, are of 20 second duration and are aired in the daytime from 9:00 A.M. to 4:00 P.M. and from 4:30 P.M. to 6:00 P.M. These time periods are not prime time periods [prime time generally 8:00 P.M. to 11:00 P.M. when shows of the CBS affiliate are aired] and they are not prime access time periods [prime access generally 7:00 P.M. to 8:00 P.M.].

In addition to announcements made pursuant to the trade agreement, WHEC, T.V. has advertised and continues to advertise motion picture attractions for Loews Theatre, Rochester also known as Loews Pittsford. These additional announcements are made pursuant to "short term local contract", which is the manner by which all advertising for any advertiser not subject of a trade agreement is arranged. For these additional announcements, Loews is billed on the same basis and at the same rate as all other non trade agreement advertisers and Loews pays for the service by cash or check like all other non trade agreement advertisers.

In an apparent attempt to develop the position that Loews is using and has used its position as a hotel entrepreneur to gain favorable advertising agreements for its motion picture exhibitors thereby gaining an unfair competitive advantage over other exhibitors, Friedberg sought information concerning WHEC's advertising rate schedule and sought information relative to the manner in which the trade agreement is handled for accounting

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purposes and profit and loss.

WHEC - T.V. charges for advertising on the basis of the following rate schedule:

1. 10 second spot announcements - \$5.00 to \$200.00, the particular charge depending on the air time requested and on whether the advertisement is scheduled as a fixed time, preemptable time or immediately preemptable time announcement;

2. 30 second spot announcements - \$10.00 to \$400.00, depending on the same variables as apply to 10 second spots; and

3. One minute spots - \$20.00 to \$800.00, again depending on the same variables.

Of WHEC's advertising spots, 70 per cent are 30 second spots, 20 per cent are 60 second spots and 10 per cent are 10 second spots. You will note that Loews trade agreement spots are 20 second spots which, according to the testimony, are an anachronism in the industry and would be considered, if requested, on the same rate basis as 30 second spots although such a request i.e. to pay more money for less air time, has never been made and would be ludicrous.

Friedberg tried, time and again, to correlate the Loews trade announcement spots with the rate schedule but was unable to achieve such correlation. The reasons for this failure are that there are no requests for 20 second spots under the rate schedule and that non trade advertising always involves an advertiser's request for a certain time or times of broadcast and involves an advertisers selections of either a fixed time, preemptable time or immediately preemptable time basis for the spot announcement sought.

Now, fixed time requires that the station make the advertiser's announcement in the time spot agreed upon, preemptable time requires the station to give the advertiser two weeks notice of a change in the previously agreed on time spot and immediately preemptable permits a time spot change for the announcement without notice to the advertiser.

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The Loews spots pursuant to the trade agreement have no status whatsoever. These spots are fitted into the station's schedule during the hours of 7:00 A.M. to 1:00 A.M. whenever the station decides and are used as fillers where there is no advertisement scheduled. Mr. Kronquest indicated two shows that the station airs, one in the morning and the "Bonanza" rerun show aired from 5:00 P.M. to 6:00 P.M., where the time spots for advertising are usually empty and where the trade agreement advertising is used as a filler.

In some cases the station may not broadcast seven advertisements in one week but will run more in one week and less in another or the station will run more spots on one day and less or none on another. The advertising announcements made pursuant to the trade agreement are completely foreign to rate schedule announcements.

Announcements are logged on a daily log showing the date and time they were aired and their duration. These logs have been retained by the company for the past seven years and Friedberg indicated that he might wish to inspect them, agreeing to inspect them only on notice to all counsel.

Once a month, at the end of every broadcast month, Loews, whether on the trade agreement or short term contract spots, along with all other advertisers, is provided with what was termed an "affidavit of performance". This "affidavit of performance" is contained on the monthly invoice sent as a bill to each party who advertised during that month. It is not a sworn statement but is a notation at the bottom of the invoice that WHEC has performed as noted on the invoice, which invoice lists the day, time, duration, nature and the charge for such advertising. The trade agreement invoice does not list a charge but contains all the other information carried on the regular invoice. If the invoice represents a short term contract with Loews for advertising a motion picture rather than an advertisement pursuant to the trade agreement it will appear as "Loews/name of the picture advertised" and will contain the charge for the advertisement. These invoices are retained for three years and Friedberg indicated he might wish to inspect them and again agreed to inspect only on notice to all counsel.

Mr. Kronquest was not knowledgeable on the manner by which trade agreement transactions were recorded for accounting purposes and profit and loss but assumed the advertising would be set up as a receivable which would be cancelled out by the service received by the station from Loews. However, the use of Loews services which was mainly

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hotel accommodations appeared disproportionately less than the advertising time allotted to Loews under the agreement.

At this point, it is of interest to note that WHEC - T.V. has trade arrangements with T.V. Guide, General Motors Chevrolet Division, Kellogg Corp., Miles Laboratories and Lever Brothers. In each instance, the trade agreement provides WHEC - T.V. with programming such as news clips, the shows "The Adventurer", "Survival" and "Untamed World" and none provide services such as those provided by Loews.

The above represents the sum and substance of Mr. Kronquest's testimony and, after some off the record discussion, Mr. Fred D. Pestorius was sworn.

B. Fred D. Pestorius appears to be in his late fifties or early sixties and is built like a tight end. He is Business Manager for WHEC - T.V. and has held that position since January 1st, 1971 when the position was first created. Prior to becoming Business Manager for the T.V. station, Mr. Pestorius had been Station Manager for WHEC - Radio.

Mr. Pestorius' testimony was limited to an affirmation of the Kronquest testimony plus an identification of the individual or individuals at WHEC - T.V. who could testify, on personal knowledge, concerning the manner by which the trade agreement is handled for accounting purposes and profit and loss and provided additional testimony on the billing procedure previously described by Kronquest.

If Friedberg feels he is developing something useful from this testimony, he would certainly seek to depose Leo Wesley, identified by Pestorius as the comptroller of WHEC - T.V. for some sixteen or seventeen years.

In any event, the testimony of Fred Pestorius was short and to a large degree cumulative.

The deposition of WHEC, INC. was adjourned without a definite date for resumption with defense objections being noted to any continuation on the basis that such testimony was

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and would be completely irrelevant.

On Wednesday, July 18th, 1973, this writer returned to Rochester for the deposition of Sande Broadcasting Co., Inc. (Sande).

Except for counsel representing WHEC, INC., all counsel appearing at the previous deposition were present for the deposition of "Sande".

C. Sande Broadcasting Co., Inc. produced two witnesses, Gary W. Sankey and John L. Nichols. Mr. Nichols, the President of Sande, is an attorney but does not practice and was not appearing as counsel to "Sande" but was merely accompanying Sankey. In effect, "Sande" was appearing without counsel.

"Sande" came into existence in January of 1972 approximately one month after plaintiffs' complaint was filed with the Federal Court. Thus, immediately after Gary W. Sankey was sworn, defense objections were made to the testimony to be offered on the grounds it would be irrelevant and without the scope of the complaint. In any event, objections having been noted, the examination commenced.

Mr. Sankey appears to be in his late thirties and is a conservatively mod looking individual. Since the formation of "Sande" in January, 1972, Mr. Sankey has been the General Sales Manager of Sande's WAXC radio station in Rochester.

Sande purchased the radio station from the owner of WHEC - Radio and took its wavelength on the radio dial as well as its broadcasting equipment and many of its personnel including Mr. Sankey, who had been Sales Manager with WHEC - Radio.

It appears that WAXC accepted a "reciprocal trade agreement" with Loews which was identical to the agreement its predecessor WHEC - Radio had with Loews.

Sankey's testimony was much less extensive than Kronquest's although they both touched on essentially the same areas.

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The trade agreement was not produced and it is not clear if the agreement was oral or in writing. However, the arrangement, as per the testimony, obligated Loews to provide hotel accommodations to WAXC for the latter's personnel on an unlimited basis. In return, WAXC is obligated to provide Loews twenty (20) thirty (30) second spots per week for announcements of advertising copy provided by Loews.

The rate for a thirty (30) second spot is \$14.40 per spot and the advertisement for Loews under the trade agreement included advertising for hotels and motion pictures at Loews Pittsford Theatre. In addition to spots provided to Loews under the trade agreement, WAXC does provide spots and has provided spots to Loews for particular pictures on a per picture basis. These additional spots are billed in the same manner and contracted for in the same manner as all non trade agreement advertising.

WAXC maintains daily logs which indicate the spot advertisements made and these must be retained for three years although WAXC logs only go back as far as the station's inception in January, 1972.

As was so for WHEC - T.V., the witness could not state from personal knowledge the manner in which the trade agreement performance was handled for accounting purposes. Mr. Sankey indicated that the service provided by Loews cancelled out the service provided by WAXC but again, as was the case with WHEC - T.V., the use of Loews services appeared of considerably less value than the service provided by WAXC.

Mr. Sankey identified Miss Lee Carter and Mrs. Kitty Hoy as members of the accounting department knowledgeable on the bookkeeping process relative to the trade agreement. Again, if Mr. Friedberg wishes to adequately develop this line of inquiry he will be required to depose one of these individuals.

Toward the end of the testimony WAXC produced an accounts receivable ledger sheet which is attached hereto. Mr. Sankey could not adequately identify this document or its

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contents. However, absent any proper identification or foundation, plaintiff had the document marked as "WAXC 1" for identification.

After some off the record discussion, Mr. Nichols, who, as you will recall, accompanied Mr. Sankey not as a witness but as moral support, was sworn.

D. John L. Nichols is the President of WAXC and his testimony was extremely brief.

Mr. Nichols could not adequately identify the instant document and after having first described its contents as representing a "trade-out", that is, value of services received from Loews as cancelled out by services performed by WAXC under the trade agreement, he recanted and maintained his lack of personal knowledge as to the document's contents.

With the recantation, Mr. Nichols' testimony was concluded and the deposition of "Sande" adjourned without date with defense objections being noted.

Upon your review of the document, you will probably reach the conclusion that the ledger sheet represents non trade agreement advertising spots contracted for by Loews for particular pictures and paid for by Loews by numbered check.

This report letter should obviate the need for transcripts of testimony and unless you advise otherwise no order will be placed. In any event, if we find in the future that they are necessary, we can always have the copies filed with the Court reproduced.

Mr. Friedberg's tactics are somewhat puzzling. If he wanted to make a show of strength and start all defendants thinking in terms of a quick and substantial settlement, why would he notice and depose such inconsequential witnesses. Furthermore, why depose these witnesses at all. Certainly he could have gained the same information and more in private conferences with these companies and after such conferences determined whether deposition would best serve his desired end.

As previously noted, plaintiffs' reason for taking these depositions is difficult to discern. After listening

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to the questions and answers and after reviewing my notes of the testimony, these depositions must represent an initial thrust by plaintiffs' counsel at Loews in an attempt to develop the use by Loews of its muscle to gain a favorable position for its motion picture exhibiting business with resultant deleterious effects on exhibitors lacking the muscle or competitive position to gain equal treatment from advertising sources. If this is plaintiffs' thrust, he must now depose those individuals employed by the respective corporate witnesses having knowledge of the accounting treatment relative to services given and received pursuant to the "reciprocal trade agreements". We will have to await plaintiffs' next step to determine which direction he is taking.

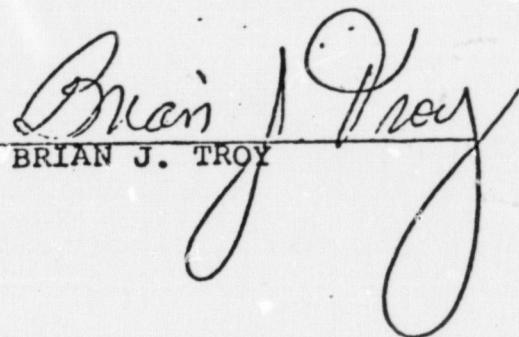
During discussions with counsel for the various co-defendants, it became apparent that each has been instructed to await the lead of the other defendants before taking any action by way of discovery or otherwise. At this point, it does not appear that inaction by all defendants is harmful but the present posture of the defendants could be harmful if carried too far.

We would welcome any comments or opinions you may have with respect to the matters discussed in this letter and we will continue to keep you informed.

Very truly yours,

JAECKLE, FLEISCHMANN & MUGEL

BY:


BRIAN J. TROY

BJT:bak

EXHIBIT D-8 ANNEXED TO
STIPULATION OF FACTS

JAECKLE, FLEISCHMANN & MUGEL

ATTORNEYS AT LAW

700 LIBERTY BANK BUILDING BUFFALO, NEW YORK 14202

716-856-0600

October 17, 1973

Allan Albala, Esq.
Swerdlow, Glikbarg & Shimer
544 United California Bank Building
9601 Wilshire Boulevard
Beverly Hills, California 90210

Re: Lyell Theatre Corporation et al.
vs. Loews Corporation, et al.
Litigation - U.S.D.C., W.D.N.Y.

Dear Mr. Albala:

It appears that plaintiffs' counsel gives sporadic attention to the above-referenced action and produces his work in volume flourishes.

We have received from plaintiffs' counsel and are enclosing for your attention and where necessary, your response, the following documents:

~~✓~~(1) Plaintiffs' notice to take depositions of
(a) Twentieth Century-Fox Film Corporation set for 10:00 A.M.
on October 23, 1973 in Buffalo, N. Y.; (b) Warner Bros.
Distributing Corporation set for 10:00 A.M. on October 25,
1973 in N.Y.C., N.Y.; (c) Universal Film Exchanges, Inc.
set for 2:00 P.M. on October 25, 1973 in N.Y.C., N.Y.; and
(d) Buena Vista Distributing Company, Inc. set for 2:00 P.M.
on October 23, 1973 in Buffalo, New York.

It will be noted that these will be depositions of non-party distributors.

Upon receipt of this notice I contacted Saul Friedberg, Esq. and was advised by Mr. Friedberg that if he could obtain the cut-off cards from these non-parties he would forego the depositions.

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Allan Albala, Esq.

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✓ (2) A letter dated October 5th, 1973 from plaintiff demanding inspection and copying of the documents and materials listed therein.

In my telephone conference with Mr. Friedberg on October 12th, 1973, I advised that compliance with the demand would take two or three weeks.

✓ (3) Second Set of Interrogatories to Defendant Cinerama Releasing Corporation.

✓ (4) First Request for Admissions to Defendant Cinerama Releasing Corporation.

Items (3) and (4) accompanied by Individual Picture Sheets marked "Cinerama".

✓ (5) Second Set of Interrogatories to Defendant National General Pictures Corporation.

✓ (6) First Request for Admissions to Defendant National General Pictures Corporation. Items (5) and (6) coupled with Individual Picture Sheets marked "NGP".

✓ (7) Second Set of Interrogatories to Defendant Metro-Goldwyn-Mayer, Inc.

✓ (8) First Requests for Admissions to Defendant Metro-Goldwyn-Mayer, Inc.

Items (7) and (8) coupled with Individual Picture Sheets Marked "MGM".

✓ (9) Second Set of Interrogatories to Defendants Paramount Pictures Corporation and Paramount Film Distributing Corporation.

✓ (10) First Requests for Admissions to Defendants Paramount Pictures Corporation and Paramount Film Distributing Corporation.

Items (9) and (10) coupled with Individual Picture Sheets marked "Paramount".

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u(11) First Request for Admissions to
Defendant Columbia Pictures Industries, Inc. coupled with
Individual Picture Sheets marked "Columbia".

As per your experience and direction, we do not
intend on being present at the depositions. If you feel we
should appear at any of the scheduled depositions
kindly advise accordingly.

The admissions sought are propounded in an
unusual way but this form is most probably the norm in this
type action.

I have advised Mr. Friedberg that we will respond
to the items of demand served in two or three weeks.

I would appreciate it if you could afford me a
few days to review your responses and comment thereon
before service on plaintiffs' counsel is due.

Very truly yours,

JAECKLE, FLEISCHMANN & MUGEL

BY:

Brian J. Troy
BRIAN J. TROY

BJT:bak
Enclosures

EXHIBIT E ANNEXED TO
STIPULATION OF FACTSUNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

LYELL THEATRE CORPORATION

Plaintiff

vs.

✓ COLUMBIA PICTURES INDUSTRIES, INC.

CIV- 74-132

✓ UNITED ARTISTS CORPORATION

✓ NATIONAL GENERAL PICTURES CORPORATION

✓ PARAMOUNT PICTURES CORPORATION

✓ CINERAMA RELEASING CORPORATION

COMPLAINT

✓ METRO-GOLDWYN-MAYER, INC.

✓ TWENTIETH CENTURY FOX FILM CORPORATION

Civil Action
No. 74-

✓ WARNER PICTURES DISTRIBUTING CORPORATION

✓ AMERICAN INTERNATIONAL PICTURES, INC.

✓ LOEWS CORPORATION

✓ LOEWS THEATRE AND REALTY CORPORATION

✓ HOLIDAY THEATRES 1-2-3 INC.

✓ HOLIDAY QUARTET INC.

✓ HOLIDAY DRIVE-IN INC.

✓ JO-MOR ENTERPRISES, INC.

Defendants

COMPLAINT AND DEMAND FOR JURY TRIAL

1. The suit arises out of violations of Sections 1, 2, 1 and 13a of Title 15 of the United States Code, all of which Sections are hereinafter referred to as the "Antitrust Laws". The jurisdiction of this Court is based upon Sections 4 and 15 of Title 15 of the United States Code.

2. Plaintiff is a corporation organized and existing under the laws of the State of New York with a place of business at Suite 723, 183 Main Street East, Rochester, New York.

3. Plaintiff has been in the business of operating motion picture theatres in the Buffalo, New York metropolitan area which includes the licensing from the distributors thereof in interstate

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commerce of the right to exhibit feature motion pictures in their said theatres for license fees known as film rental and the exhibition of them therein to the public for an admission price.

4. The following is a list of the names, addresses, seating capacities and dates of operation of the theatres in the Buffalo metropolitan area so operated by plaintiff:

<u>Theatre and Address</u>	<u>Seating Capacity</u>	<u>Period Operated by Plaintiff</u>
Center	889	pre-1970 to Dec 24, 1973
Backstage	289	pre-1970 to Dec 24, 1973
Penthouse all at 580 Main St. Buffalo, N.Y. 14202	606	pre-1970 to Dec 24, 1973
Maple-Forest 1	250	Oct 6, 1972 to Dec 24, 1973
Maple-Forest 2 both at 1360 N. Forest Rd Williamsville, N.Y. 14222	450	Oct 6, 1972 to Dec 24, 1973

5. Defendant COLUMBIA PICTURES INDUSTRIES, INC. ("COLUMBIA") is a publicly owned corporation organized and existing under the laws of the State of Delaware with its principal place of business at 711 Fifth Avenue, New York, New York. Part of its business is the production and distribution to theatres throughout the United States including the Buffalo metropolitan area of feature motion pictures. COLUMBIA is a major source of feature motion pictures for theatres in the United States, including those in the Buffalo metropolitan area.

6. Defendant UNITED ARTISTS CORPORATION ("UA") is organized and existing under the laws of the State of Delaware with its principal place of business at 729 Seventh Avenue, New York, New York and an office at 300 Delaware Avenue, Buffalo, New York. Part of the business of UA is the production and distribution to theatres throughout the United States including the Buffalo metropolitan area of feature motion pictures. UA

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is a major source of feature motion pictures for theatres in the United States, including those in the Buffalo metropolitan area.

7. Defendant NATIONAL GENERAL PICTURES CORPORATION ("NGP") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 600 Madison Avenue, New York, New York. Part of its business is the production and distribution to theatres throughout the United States including the Buffalo metropolitan area of feature motion pictures. NGP is a major source of feature motion pictures for theatres in the United States, including those in the Buffalo metropolitan area.

8. Defendant PARAMOUNT PICTURES CORPORATION ("Paramount") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 1 Gulf and Western Plaza, New York, New York and an office at 300 Delaware Avenue, Buffalo, New York. Part of the business of Paramount is the production and distribution to theatres throughout the United States including the Buffalo metropolitan area of feature motion pictures. Paramount is a major source of feature motion pictures for theatres in the United States, including those in the Buffalo metropolitan area.

9. Defendant CINERAMA RELEASING CORPORATION ("CINERAMA") is a corporation organized and existing under the laws of the State of New York with its principal place of business at 1345 Avenue of the Americas, New York, New York. Part of the business of CINERAMA is the production and distribution to theatres throughout the United States including the Buffalo metropolitan area of feature motion pictures for theatres in the United States, including those in the Buffalo metropolitan area.

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10. Defendant METRO-GOLDWYN-MAYER, INC. ("MGM") is a publicly owned corporation organized and existing under the laws of the State of Delaware with its principal place of business at 1350 Avenue of the Americas, New York, New York and an office at 170 Franklin Street, Buffalo, New York. For the period from March 15, 1970 until about December 24, 1973, part of its business was the production and distribution to theatres throughout the United States including the Buffalo metropolitan area of feature motion pictures. MGM was during that period a major source of feature motion pictures for theatres in the United States, including those in the Buffalo metropolitan area.

11. Defendant TWENTIETH CENTURY FOX FILM CORPORATION ("FOX") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 1345 Avenue of the Americas, New York, New York 10013, and an office at 300 Delaware Avenue, Buffalo, New York. Part of its business is the production and distribution to theatres throughout the United States including the Buffalo metropolitan area of feature motion pictures. FOX is a major source of feature motion pictures for theatres in the United States, including those in the Buffalo metropolitan area.

12. Defendant WARNER PICTURES DISTRIBUTING CORPORATION ("WARNER") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 666 Fifth Avenue, New York, New York 10019. Part of its business is the production and distribution to theatres throughout the United States including the Buffalo metropolitan area of feature motion pictures. WARNER is a major source of feature motion pictures for theatres in the United States, including those in the Buffalo metropolitan area.

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13. Defendant AMERICAN INTERNATIONAL PICTURES, INC.

("AI") is a corporation organized and existing under the laws of the State of Delaware with the principal place of business at 165 West 46th Street, New York, New York 10036. Part of its business is the production and distribution to theatres throughout the United States including the Buffalo metropolitan area of feature motion pictures. AI is a major source of feature motion pictures for theatres in the United States, including those in the Buffalo metropolitan area.

14. COLUMBIA, UA, NGP, PARAMOUNT, CINERAMA, MGM, FOX, WARNER and AI are hereinafter sometimes referred to as "Distributor Defendants".

15. Defendant LOEWS CORPORATION ("LOEWS") is a publicly owned corporation organized and existing under the laws of the State of Delaware with a principal place of business at 666 Fifth Avenue, New York, New York. Part of the business of LOEWS is the operation, either directly or through wholly-owned subsidiaries or through wholly-owned subsidiaries of wholly-owned subsidiaries, of motion picture theatres as defined above. LOEWS so operates approximately 115 motion picture theatres throughout the United States and is one of the largest national circuits, both in terms of the number of theatres operated, and in terms of film rental paid to the distributors.

16. Upon information and belief, LOEWS and/or defendant, LOEWS THEATRE AND REALTY CORPORATION, so operate the Loew's Buffalo, 646 Main Street, Buffalo, New York, which has a seating capacity of approximately 2,800 and the LOEW'S TECK, 760 Main Street, Buffalo, New York, which has a seating capacity of approximately 800. Upon information and belief, said theatres are under the direct management of defendant LOEWS THEATRE AND REALTY

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CORPORATION, a wholly-owned subsidiary of a wholly-owned subsidiary of defendant LOEWS CORPORATION, organized and existing under the laws of the State of New York, with a principal place of business at 666 Fifth Avenue, New York, New York. Defendants LOEWS CORPORATION and LOEWS THEATRE AND REALTY CORPORATION are herein-after collectively referred to as "LOEWS".

17. Defendants HOLIDAY THEATRES 1-2-3 INC., HOLIDAY QUARTET, INC. and HOLIDAY DRIVE-IN, INC. (hereinafter collectively referred to as "HOLIDAY") are corporations organized and existing under the laws of the State of New York with offices at 3755 and/or 3801 Union Road, Cheektowaga, New York and, upon information and belief, one and/or all of them have been engaged in the business of operating motion picture theatres, as previously defined, viz. the HOLIDAY 1 (868 seats) and HOLIDAY 2 (868 seats), 3801 Union Road, Cheektowaga, New York and the HOLIDAY 3 (300 seats), HOLIDAY 4 (300 seats), HOLIDAY 5 (300 seats) and HOLIDAY 6 (300 seats), 3755 Union Road, Cheektowaga, New York, in the Buffalo metropolitan area for a period from prior to 1970 until the present time, except that the HOLIDAY 3, HOLIDAY 4, HOLIDAY 5 and HOLIDAY 6, upon information and belief, did not begin operations until early 1972; all references to HOLIDAY are limited to the actual periods of operation of the respective theatres by HOLIDAY.

18. Upon information and belief, defendant JO-MOR ENTERPRISES, INC. ("JO-MOR") is a corporation organized and existing under the laws of the State of New York with an office at 240 East Avenue, Rochester, New York. JO-MOR was engaged in the business of operating a motion picture theatre, as defined above, viz. the CINEMA THEATRE, 645 Main Street, Buffalo, New York, in the Buffalo metropolitan area from prior to 1970 until,

Exhibit E Annexed to Stipulation of Facts

upon information and belief, sometime early in 1973; all references to JO-MOR are limited to said actual period of operation of said theatre by JO-MOR.

19. LOEWS, HOLIDAY and JO-MOR are sometimes hereinafter referred to as "Exhibitor Defendants".

20. The business of producing, distributing and exhibiting feature motion pictures as engaged in by the parties hereto is a part of the commerce between the several states of the United States.

21. The feature motion pictures distributed by the Distributor Defendants have, during the past four years, shared more than half of the total box office market for all feature motion picture films distributed in the United States during said period. It is impossible for any exhibitor to compete in his area without access to the films of the Distributor Defendants.

22. Commencing at a date presently unknown to plaintiff but which antedated March 15, 1970, defendants have combined, conspired and agreed with each other and amongst themselves in violation of the Antitrust Laws to restrain trade and commerce in the business of distributing and exhibiting feature motion pictures with the purpose and effect of damaging and destroying the business of plaintiff in and about the Buffalo, New York metropolitan area, preferring, aiding and discriminating in favor of the business of defendants LOEWS, HOLIDAY and JO-MOR in Buffalo, New York and to create a monopoly in defendants LOEWS, HOLIDAY and JO-MOR in the business of licensing and exhibiting feature motion pictures in and around Buffalo, New York and, in pursuance thereof, have committed the following acts:

(a) The Distributor Defendants have refused to offer and license their feature motion pictures to plaintiff for first

Exhibit E Annexed to Stipulation of Facts

run showing in the Buffalo area on the merits and without discrimination except for such motion pictures as were refused and rejected by defendants LOEWS, HOLIDAY and JO-MOR and instead have offered to license and licensed said feature motion pictures, for first run showing in said area, to defendants LOEWS, HOLIDAY and JO-MOR regardless of merit and to the exclusion of the plaintiff.

(b) The Distributor Defendants have failed and refused to offer and license their feature motion pictures to plaintiff for subsequent run showing in the Buffalo area following the runs of said pictures first run in the theatres of LOEWS, HOLIDAY and JO-MOR on the merits and without discrimination and instead have offered to license and licensed said pictures for such subsequent runs to defendants LOEWS, HOLIDAY and JO-MOR regardless of merit and to the exclusion of plaintiff.

(c) Upon information and belief, the Distributor Defendants or some of them entered into agreements and/or master agreements and/or formula deals with LOEWS whereby the same film was licensed to LOEW's theatres in the Buffalo metropolitan and other areas as a national or regional "package" deal, thereby precluding plaintiff and others in the Buffalo metropolitan area from effectively competing for films to be shown in said area.

(d) The Distributor Defendants have agreed with defendants LOEWS, HOLIDAY and JO-MOR in relation to feature motion pictures licensed to them that said pictures would be played in the Buffalo area, even though said theatres did not and could not, by reason of their geographic locations, serve more than a fraction of the population of said area, and did so license said pictures, with the result that plaintiff was unable to license said pictures in its theatres which were remote from the theatres of defendants LOEWS, HOLIDAY and JO-MOR for simultaneous exhibition, thus

Exhibit E Annexed to Stipulation of Facts

depriving a substantial portion of the population of the Buffalo metropolitan area of the opportunity of seeing said pictures on first run and reducing the total box office business of all pictures so licensed in the Buffalo metropolitan area to plaintiff's damage.

(e) Upon information and belief, the Distributor Defendants have discriminated against plaintiff in connection with terms of film rental and other license provisions, licensing their pictures to defendants LOEWS, HOLIDAY and JO-MOR upon more favorable terms and at lower percentages of gross receipts than plaintiff was obliged to pay for those few pictures that were offered to it for licensing by said Distributor Defendants.

(f) Upon information and belief, the Distributor Defendants have discriminated against plaintiff and in favor of defendants LOEWS, HOLIDAY and JO-MOR in other ways which plaintiff cannot determine until after pre-trial discovery has been completed.

23. Said wrongful acts of defendants have damaged plaintiff in its business in the following manners:

(a) Since plaintiff was denied access to first and subsequent run showings of the feature motion pictures of Distributor Defendants, the gross receipts of plaintiff's theatres were substantially reduced in comparison with the gross receipts of the theatres of defendants LOEWS, HOLIDAY and JO-MOR. Upon information and belief, as a result, the theatres of plaintiff have lost gross receipts for the period from March 15, 1970 to December 24, 1973 in the amount of approximately \$810,000.00. Plaintiff cannot determine the exact figures until discovery has been completed.

(b) Plaintiff believes and alleges that, by reason

Exhibit E Annexed to Stipulation of Facts

of the wrongful acts described in subparagraph "(c)" of the preceding paragraph, the gross receipts of all theatres in the Buffalo area, including plaintiff's theatres, have been reduced by a minimum of 25%, thus increasing the damage suffered by plaintiff described in subparagraph "(a)" of this paragraph by 25%.

(c) By reason of plaintiff's said loss of gross receipts as described above, plaintiff's profits from the concession income of plaintiff's theatres has been reduced in said period by an amount which plaintiff believes and alleges was not less than \$40,000.00 in said period.

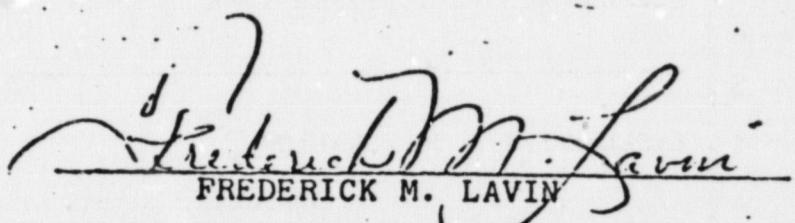
(d) By reason of the wrongful acts described in the preceding paragraph, plaintiff has been obliged to pay a higher percentage of their gross receipts as film rental than they would have been obliged to pay if said wrongful acts had not occurred, in an amount which plaintiff cannot determine until after discovery has been completed.

(e) Plaintiff has been further damaged by reason of the wrongful acts referred to in subparagraph "(e)" of the preceding paragraph in an amount which plaintiff cannot determine until after discovery has been completed.

WHEREFORE, plaintiff prays judgment against defendants joint and severally for three times the actual damages so suffered by plaintiff, which actual damages at this time are estimated to be not less than \$1,052,500.00, together with its counsel fees, costs and disbursements, and decreeing the dissolution and termination of the illegal conspiracy, monopoly and attempt to

Exhibit E Annexed to Stipulation of Facts

monopolize herein alleged and the dissipation of the results thereof.



FREDERICK M. LAVIN

MOOT, SPRAGUE, MARCY, LANDY,
FERNBACH & SMYTHE
Attorneys for Plaintiff
Office and P. O. Address
2300 Two Main Place
Buffalo, New York 14202

Dated: March 15, 1974

DEMAND FOR JURY TRIAL

Plaintiff respectfully demands a trial by jury of this action.

CR/Cadby/JH
Bloddy

Ex F

EXHIBIT F ANNEXED TO
STIPULATION OF FACTS1 UNITED STATES DISTRICT COURT FOR THE
2 WESTERN DISTRICT OF NEW YORK

3 LYELL THEATRE CORPORATION,

4 Plaintiff

5 vs.

6 Civil 74-132

7 COLUMBIA PICTURES INDUSTRIES, INC., et al,

8 Defendants } ANSWER OF DEFENDANT
9 } CINERAMA RELEASING
10 } CORPORATION11 Defendant CINERAMA RELEASING CORPORATION, by their
12 attorneys Jaeckle, Fleischman & Mugel for its answer to
13 plaintiff's complaint herein alleges as follows:14 FIRST DEFENSE15 1. Defendant denies each and every allegation contained in
16 paragraph 1 of the complaint except to the extent defendant
17 recognizes plaintiff seeks to invoke the jurisdiction of this
18 court under and pursuant to the statutes referred to in said
paragraph.19 2. Defendant lacks knowledge or information sufficient to
20 form a belief as to the allegations contained in paragraph 2 of
21 the complaint.22 3. Defendant lacks knowledge or information sufficient
23 to form a belief as to the truth of the allegations contained in
24 paragraphs 3 and 4 of the complaint except to the extent defendant
25 is informed and believes there are motion picture theatres with
26 the names listed in paragraph 4 of the complaint located at the
27 places listed in said paragraph.28 4. Defendant lacks knowledge or information sufficient to
29 form a belief as to the truth of the allegations contained in
30 paragraphs 5 through 8 and 10 through 13 of the complaint except
31 defendant is informed and believes Columbia Pictures Industries,
32 Inc., United Artists Corporation, National General Pictures

Exhibit F Annexed to Stipulation of Facts

1 Corporation, Paramount Pictures Corporation, Metro-Goldwyn-Mayer,
2 Inc., Twentieth Century Fox Film Corporation, Warner Bros.
3 Distributing Corporation and American International Pictures,
4 Inc. are all corporations engaged, in part, in the production
5 and/or distribution of motion pictures.

6 5. Defendant admits that portions of paragraph 9 of the
7 complaint which allege Cinerama Releasing Corporation is a
8 corporation organized and existing under the laws of the State of
9 New York and defendant is engaged in the business of distributing
10 motion pictures in various areas, including Buffalo, New York.
11 Except as so admitted, defendant denies each and every allegation
12 contained in said paragraph.

13 6. Defendant lacks knowledge or information sufficient to
14 form a belief as to the truth of the allegations contained in
15 paragraphs 15 through 17 of the complaint, except defendant is
16 informed and believes there are motion picture theatres with the
17 names listed in said paragraphs located at the places listed there-
18 in.

19 7. Defendant lacks knowledge or information sufficient to
20 form a belief as to the truth of the allegations contained in
21 paragraph 18 of the complaint except defendant is informed and
22 believes there is a motion picture theatre by the name and at
23 the place listed in said paragraph.

24 8. Defendant lacks knowledge or information sufficient to
25 form a belief as to the truth of the allegations contained in
26 paragraphs 20 and 21 of the complaint.

27 9. Defendant denies each and every allegation contained in
28 paragraphs 22 and 23 of the complaint and each and every sub-part
29 or sub-paragraph thereof and defendant further denies each and
30 every allegation of the complaint not hereinabove admitted,
31 denied or otherwise controverted.

*Exhibit F Annexed to Stipulation of Facts*SECOND DEFENSE

10. Defendant alleges plaintiff's complaint fails to
3 state a claim upon which relief can be granted.

THIRD DEFENSE

11. The alleged cause or causes of action, if any, asserted
6 by plaintiff in the complaint herein and not having accrued
7 within the four years immediately preceding the commencement of
8 this action are barred by the statute of limitations as set
9 forth in Section 15(b) of Title 15, United States Code.

10 WHEREFORE defendant CINERAMA RELEASING CORPORATION asks
11 judgment against plaintiff herein dismissing the complaint as to
12 it, for the award of all costs and expenses incurred herein,
13 and such other and further relief as the court deems just and
14 proper in the premises.

17 JAECKLE, FLEISCHMAN & MUGEL
18 Attorneys for Defendant
19 CINERAMA RELEASING CORPORATION
20 700 Liberty Bank Building
21 Buffalo, New York 14202

24 Dated:

EXHIBIT G-1 ANNEXED TO
STIPULATION OF FACTS

Ex G-1

JAECKLE, FLEISCHMANN & MUGEL

ATTORNEYS AT LAW

700 LIBERTY BANK BUILDING BUFFALO, NEW YORK 14202

716-856-0600

April 4, 1974

P.O. 1085
 Received in 20 days
 May 12 and may
 answer due
 after

Swerdlow, Glikbarg & Shimer
 Harry B. Swerdlow, Esq.
 544 United California Bank Building
 9601 Wilshire Boulevard
 Beverly Hills, California 90210

Re: Lyell Theatre Corporation
 v. Cinerama Releasing
 Corporation, et al.

Dear Mr. Swerdlow:

We are in receipt of your letter of March 28, 1974 and the enclosures annexed thereto.

We will be pleased to represent CRC in this new Buffalo phase of the above referenced litigation.

I would assume that our answer to the new complaint will be substantially the same as our answer to the Rochester complaint.

As I recall, your firm prepared the answer to the Rochester action; kindly advise if the same procedure will prevail in this instance.

Very truly yours,

JAECKLE, FLEISCHMANN & MUGEL

BY: Brian J. Troy
BRIAN J. TROY

BJT:bak

EXHIBIT G-2 ANNEXED TO
STIPULATION OF FACTSJAECKLE, FLEISCHMANN & MUGEL
ATTORNEYS AT LAW700 LIBERTY BANK BUILDING BUFFALO, NEW YORK 14202
716-856-0600

June 6, 1974

Swerdlow, Glikberg & Shimer
Harry B. Swerdlow, Esq.
544 United California Bank Building
9601 Wilshire Boulevard
Beverly Hills, California 90210

Re: Lyell Theatre Corporation v.
Cinerama Releasing Corporation,
et al. - Civil Action No. 1974-132

Dear Mr. Swerdlow:

We have received within the last months and are enclosing for your file copies of the following documents:

1. Plaintiff's notice of motion and supporting affidavit seeking to add Martos Theatre Inc. as a party defendant and reflecting a motion, a copy of which we did not receive, brought by defendant Jo-Mor Enterprises, Inc. for summary judgment;
2. An Order granting judgment in Jo-Mor's favor and granting plaintiff's motion to add Martos Theatre, Inc. as a party defendant;
3. A copy of a letter and amended complaint which indicated that the only change made was to substitute Martos Theatre, Inc. for Jo-Mor and noted no need for a formal answer to such amended complaint;
4. Answer of defendants, Columbia, United Artists, Paramount, Metro-Goldwyn-Mayer, Twentieth Century Fox and Warner Brothers; and
5. A copy of defendants Columbia, United Artists, Paramount, Metro-Goldwyn-Mayer, Twentieth Century Fox, Warner Brothers and American International Pictures request to produce returnable July 11, 1974.

We are in receipt of and have reviewed the letter from the Mideast Manager of Cinerama Releasing.

Exhibit G-2 Annexed to Stipulation of Facts

Swerdlow, Glikbarg & Shimer
Page Two
June 6, 1974

I assume we will continue to keep a low profile and will forego our own discovery requests until a later date.

Our bookkeeping department notes that our statement for services rendered dated December 11, 1973 remains unpaid.
Would you kindly check this matter.

We will keep you informed on the progress of the two pending litigations.

Very truly yours,

JAECKLE, FLEISCHMANN & MUGEL

BY:

BRIAN J. TROY

BJT:bak
Enclosures

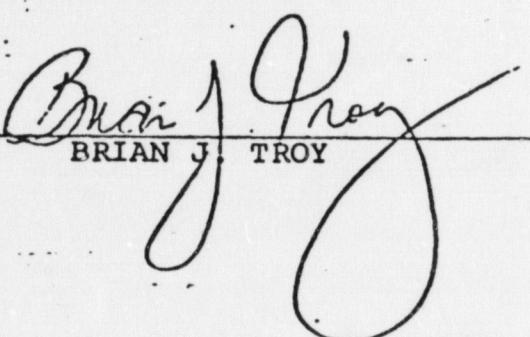


EXHIBIT G-3 ANNEXED TO
STIPULATION OF FACTS

file
Ciné
Lyell II

CX6-3

May 31, 1974

Brian J. Troy, Esq.
Jaeckle, Fleischmann & Mugel
700 Liberty Bank Building
Buffalo, New York 14202

Re: Lyell Theatre Corporation v.
Cinerama Releasing Corporation, et al.

Dear Mr. Troy:

I am enclosing herewith a copy of a letter
dated May 8, 1974 from the mideast manager of Cinerama
Releasing with reference to the above-entitled matter
which is self-explanatory.

Sincerely,

Harry B. Swerdlow

HBS:wg

Enclosure

cc: Joseph Sugar Wiesencl
Harry Wiesencl

EXHIBIT G-4 ANNEXED TO
STIPULATION OF FACTS

CINERAMA RELEASING

CINERAMA RELEASING CORPORATION AND
CINERAMA RELEASING DISTRIBUTORS, INC.

Ex G-4

WM. G. BUGIE
MIDEAST DIVISION MANAGER219 FILM BUILDING, 2108 PAYNE AVENUE, CLEVELAND,
OHIO 44114 TELEPHONE: (216) 696-3608

May 8, 1974

Mr. Harry B. Swerdlow
 Swerdlow, Glikbarg & Shimer
 9601 Wilshire Boulevard
 Beverly Hills, California 90210

Dear Harry:

Joe Sugar has requested I give you background information pertaining to the civil action filed by Lyell Theatre Corporation against a number of distribution corporations and three theatre circuits.

I am having typed a blow-by-blow account of what happened to the great majority of our pictures released in Buffalo from 1970 through December 24, 1973, including all pictures for which the Lyell Theatre Corporation expressed interest.

The Center, Backstage, and Penthouse theatres are all part of a single complex and are all located in downtown Buffalo. The Center, at one time was the class theatre in downtown Buffalo, and played product aimed at this audience. Loews Buffalo, with a seating capacity of 3,488 and Loews Teck with a seating capacity of 1,207, have always aimed at the exploitation, action type of trade with emphasis on the black audience. As the downtown area in the city of Buffalo turned predominately black, the grossing potential of the Center and it's two auxiliary theatres waned, and Mr. Martina began to compete for the black audience at the Center and for the sex audience at the Backstage and Penthouse. He was never able to generate real black business in any of the theatres.

Exhibit G-4 Annexed to Stipulation of Facts

Mr. Harry B. Swerdlow
May 8 (2) 1974

Bidding has existed in Buffalo during the entire period involved. The Lyell Theatre Corporation opened the Maple Forests 1 & 11 in October of 1972 and immediately began to compete actively for first run product. While they never made any strong offers to Cinerama, large guarantees were paid to other distributors. The grosses were insufficient to support these guarantees, and the theatres experienced difficulty in gaining product. The Maple Forests theatres are located in Williamsville, about half way between the Eastern Hills and Boulevard Mall, both operated by General Cinema, and not party to this suit. The Eastern Hills is located on the eastern end of Williamsville, while the Boulevard Mall is located in Tonawanda to the north. The closest active theatre to the Maple Forests is probably the Evans, now operated by Cinemette and also has great difficulty in obtaining product due to inability to compete. The Maple Forest is now operated as a dollar house, and the exhibitor is a Earl Lynge, the son-in-law of Charlie Martina, the plaintiff. It is reported that Mr. Lynge bought the theatres from his father-in-law. The University of Buffalo is moving a major part of its campus sometime in the future to a location much nearer the Maple Forests and it is possible that they will be much better grosses in the future.

The Dipson Circuit, Cinemette, Countrywide and General Cinema are not named in this suit. The Dipson Circuit operated a number of theatres in Buffalo through the period involved up to January 30, 1973 when the circuit was sold to Cinemette. As you will see from the chart that follows this letter, Cinerama during this period had as its primary customer, the Dipson Circuit with a good deal of support from General Cinema. Dipson booked its college located theatre, the Amhurst, as a package with the Cinema Theatre downtown owned by Jo-Mar is John Martina, a cousin of the plaintiff and his opposition in both Rochester and Buffalo. Because of this arrangement, many pictures which were sold by Cinerama to the Amhurst Theatre, with the idea of playing to the college audience, also played to the Cinema, usually to very poor grosses. There was little or no competition by Lyell Theatre Corporation for this type of pictures again as will be illustrated by the chart. I might add that with changing downtown conditions, Jo-Mar dropped the operation of the Cinema Theatre.

Exhibit ... annexed to Stipulation of Facts

Mr. Harry B. Swardlow
May 8, 1974
Page (3)

The Lyell Theatre Corporation during the entire period for the most part, competed for Cinerama product for black or action oriented pictures exclusively. With regard to this type of product we sold VAULT OF HORROR to the Center Theatre on a negotiated basis and it played April 11-17, 1973 grossing \$1770. The Lyell Theatre Corporation bid for TALES FROM THE CRYPT offering two weeks, first week 35-60% and the second week at 30-60%. Because it was smaller than the Center and it was an upstairs theatre, the bid was rejected and the picture was sold to the Arthurst and Cinema theatres and grossed \$3245 at the Cinema opening May 10, 1972. No bids were received on THE HOUSE THAT DRIPPED BLOOD, another horror picture of the same type, and this picture was sold to Loews Buffalo grossing \$6891 on April 28-May 4, 1971. No bids were received on WILRD and the picture was sold on a negotiated basis at the Kenning and North Park (Dipson) and played July 14-August 3, 1971. We by-passed downtown completely on this picture. No Bids were received on BEN and the picture was sold to the Penthouse and the Baley, a Dipson theatre and played June 28-July 11 followed by a drive-in run. No bids were received on AND NOW THE SCREAMING STARTS. This picture was sold to the Penthouse on a negotiated b: and played August 15-21 with two drive-ins.

As far as black pictures themselves are concerned, the Center bid two weeks on BLACK GIRL at 35-60% the first week, and 25-60% the second week. The bid was rejected and the picture was sold to Loews Teck November 14-20 grossing \$6631. SOUL TO SOUL was bid for the Penthouse for three weeks, first week 50-60%, second week 35-60% and 25-60% the third week, again, because it was an upstairs theatre, it had played a good amount of sex, The bid was rejected and the picture was sold on a negotiated basis to the Loews Teck grossing \$8935 the first week and \$3799 the second week. No bids were received for THE MACK and the picture was sold to Loews Buffalo opening March 21, 1973, and playing four weeks to grosses of \$16,731, \$12,494, \$8310 and \$7307 respectively. A subsequent run on THE MACK was sold to the Penthouse Theatre. This picture opened July 4 and played three weeks grossing \$3693, \$2200 and \$1400 respectively. With the exception of MY OLD MAN'S PLACE, the Lyell Theatre Corporation bid only on the horror action and black pictures. On MY OLD MAN'S PLACE, the Center bid three weeks, and withdrew the bid before awarding after the circuit became aware of the grossing potential of the picture.

Exhibit G-4 Annexed to Stipulation of Facts

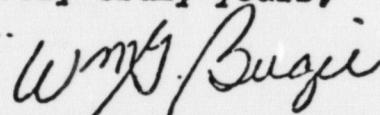
Mr. Harry B. Swerdlow
May 8, 1974
Page (4)

When the Maple Forests 1 & 11 opened, our product was more or less ignored by the Lyell Theatre Corporation for the first year while the corporation was bidding strongly on what it considered to be the top product in the market. In October of 1973, however, we received no bids on THE PYX and negotiated the deal which played one side of the Maple Forests with the Kensington and the Cinema downtown. The picture grossed \$2192 at the Kensington, \$2384 at the Maple Forests and \$1853 at the Cinema downtown.

Summerizing on the great majority of Cinerama product, the Lyell Theatre Corporation showed little or no interest, and Cinerama sold for the most part theatres operated by circuit not named in the suit. On black horror and exploitation type product, Cinerama looked for the large action houses downtown with a history of top grossing potential on this type of product. These theatres happened to be operated by Loews. We did however, include the Lyell Theatre Corporation theatres on a number of pictures, usually on a negotiated basis. The chart detailing the entire picture will be forwarded to you within the next few days.

With kind regards.

Very truly yours,



WM. G. BUGIE
MIDEAST DIVISION MANAGER

WGB/jp

cc: MR. JOE SUGAR
MR. BOB ANDERSON

EXHIBIT H-1 ANNEXED TO
STIPULATION OF FACTS

LTr

EX H-1

JAECKLE, FLEISCHMANN & MUGEL

ATTORNEYS AT LAW

700 LIBERTY BANK BUILDING BUFFALO, NEW YORK 14202

716-656-0600

September 26, 1972

10/3/72

OK

HBS

Swerdlow, Glikbarg & Shimer
 A Professional Corporation
 Harry J. Swerdlow, Esq.
 544 United California Bank Bldg.
 9601 Wilshire Boulevard
 Beverly Hills, California 90210

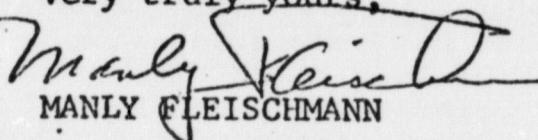
Re: Lyell Theatre Corporation and
 Martina Theatre Corporation
 -vs- Cinerama, Inc., Cinerama
 Releasing Corporation et al
 Litigation - United States
 District Court : Western
 District of New York

Dear Mr. Swerdlow:

Enclosed please find a bill for professional services rendered on behalf of Cinerama, Inc. and Cinerama Releasing Corporation as required in defense of the above referenced litigation.

This statement covers a period of approximately six months, as is more particularly set forth in the attached bill, and is submitted pursuant to our standard periodic billing procedures.

Very truly yours,


 MANLY FLEISCHMANN

MF:bjb
 Encl.

Exhibit H-1 Annexed to Stipulation of Facts

- CINERAMA RELEASING CORPORATION
Attn: Harry B. Swerdlow, Esq.
Swerdlow, Goldberg & Shimer
544 United California Bank Bldg.
9601 Wilshire Blvd.
Beverly Hills, California 90210
IN ACCOUNT WITH

10/3/72
OK
HBI

JAECKLE, FLEISCHMANN & MUGEL

ATTORNEYS AT LAW

700 LIBERTY BANK BUILDING

BUFFALO, NEW YORK 14202

September 26, 1972

Re: Lyell Theatre Corporation and
Martina Theatre Corporation vs.
Cinerama, Inc., Cinerama Releasing
Corporation et al.; Litigation
United States District Court:
Western District of New York

Professional Services:

All services in defense of the above referenced action performed on behalf of Cinerama, Inc. and Cinerama Releasing Corporation for the period commencing January 15, 1972 and ending July 8, 1972, which services include the following: initial receipt and review of the complaint and, in particular, as it related to these defendants; initial investigation of returns of service and sufficiency thereof; initial conferences with counsel for co-defendants concerning applicability and assertion of various defenses; review of proposed answer and research and conferences concerning possible revisions thereof; conferences with plaintiffs' counsel and stipulations drawn, executed, submitted and filed relating to extensions of time to answer; preparation of final form answer and service and filing thereof; receipt and review of plaintiffs' demand for interrogatories; conferences with clients and attorneys for various co-defendants concerning general objections; research and review of memorandum relating to objection to interrogatories, conferences with plaintiffs' counsel relating to various extensions of time to answer interrogatories;

Exhibit H-1 Annexed to Stipulation of Facts

Page 2

CINERAMA, INC.

CINERAMA RELEASING CORPORATION

September 26, 1972

preparation, execution, submission and filing of stipulations extending time to answer interrogatories; various conferences with plaintiffs' counsel, various correspondence with plaintiffs' counsel, conferences with clients throughout the entire period noted herein; all services as requested and required

\$2,450.00

Disbursements:

Xerox copies of documents, \$ 4.35
telephone conference charges 10.91

14.26\$2,412.26

EXHIBIT H-2 ANNEXED TO
STIPULATION OF FACTS

JAECKLE, FLEISCHMANN & MUGEL

ATTORNEYS AT LAW

700 LIBERTY BANK BUILDING BUFFALO, NEW YORK 14202

716-656-0600

December 11, 1973

Swerdlow, Glikbarg & Shimer
A Professional Corporation
Harry B. Swerdlow, Esq.
544 United California Bank Building
9601 Wilshire Boulevard
Beverly Hills, California 90210

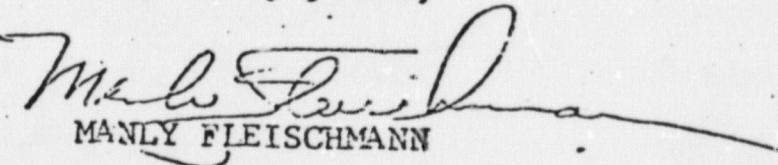
Re: Lyell Theatre Corporation and
Martina Theatre Corporation vs.
Cinerama, Inc., Cinerama Releasing
Corporation, et al.....
Litigation - United States District
Court, Western District of New York

Dear Mr. Swerdlow:

Enclosed please find a bill for professional services rendered on behalf of Cinerama, Inc. and Cinerama Releasing Corporation, all as required in defense of the above referenced litigation.

This statement covers the period commencing July 9, 1972 and ending November 17, 1973, all services as more particularly stated in the attached bill, which bill is submitted in accordance with our year end billing procedure.

Very truly yours,



MANLY FLEISCHMANN

MF;bak
Enclosure

Exhibit H-2 Annexed to Stipulation of Facts

Attn: Harry B. Swerdlow, Esq.
Swerdlow, Kirkborg & Shimer
544 United California Bank Bldg.
9601 Wilshire Boulevard
Beverly Hills, California 90210

Our File: 72-194

JAECKLE, FLEISCHMANN & MUGEL

ATTORNEYS AT LAW

700 LIBERTY BANK BUILDING

BUFFALO, NEW YORK 14202

December 11, 1973

Re: Lyell Theatre Corporation and Martina
Theatre Corporation vs. Cinerama, Inc.,
Cinerama Releasing Corporation, et al.;
Litigation, United States District Court,
Western District of New York

PROFESSIONAL SERVICES:

All services in defense of the above referenced action performed on behalf of Cinerama, Inc. and Cinerama Releasing Corporation for the period commencing July 9, 1972 and ending November 17, 1973, which services include the following: initial receipt and review of plaintiffs' request for additional discovery materials and letter forwarding said request; receipt and review of Loews' answers to interrogatories; receipt and review of defendants John R. Martina, Morris P. Slatnick and Jo-Nor Enterprises, Inc. requests for answers to interrogatories directed to plaintiffs; review of Cinerama's supplemental answers to plaintiffs' interrogatories and preparation, filing and service of formal supplemental answers; receipt and review of Loews' information submitted as a supplement to Loews' original answers to interrogatories; response to Peat, Marwick, Mitchell & Co. audit information request; receipt and response to court's inquiry concerning plaintiffs' motion to compel

12/14/73
O/k
HHS

Exhibit H-2 Annexed to Stipulation of Facts

answers to interrogatories; receipt and review of plaintiffs' answers to interrogatories of defendants John R. Martina; Morris P. Slotnick, and Jo-Mor Enterprises, Inc.; receipt and review of plaintiffs' deposition notice; attendance at depositions held in Rochester, New York; write-up of depositions; receipt, review and transmittal of plaintiffs' second set of interrogatories and first request for admissions; receipt and review of plaintiffs' second deposition notice; various telephone conversations, conferences and correspondence with counsel for co-defendants; various telephone conferences and correspondence with counsel for plaintiffs and various telephone conferences and correspondence with counsel for Cinerama; all services as requested and required in defense of the above referenced litigation.

\$1,435.00

DISBURSEMENTS:

Copying documents	\$62.48
Telephone toll charges	<u>11.60</u>

74.08

\$1,489.08

Affidavit of Donald S. Rugoff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
CINEMA 5, LTD.,

:

Plaintiff,

:

-against-

: 74 Civ. 3549
(C.L.B., Jr.)

CINERAMA, INC., NATIONWIDE THEATRES
CORP., CONSOLIDATED AMUSEMENT CO.,
LTD., PACIFIC THEATRES CORPORATION,
ATLANTIC THEATRES CORP. OF CALIFORNIA,
RKO-STANLEY WARNER THEATRES, INC.,
WILLIAM R. FORMAN, MICHAEL R. FORMAN
and JAMES J. COTTER,

:

AFFIDAVIT

:

Defendants.

:

----- x
DONALD S. RUGOFF, duly sworn deposes and says:

1. I am President of the plaintiff in this action, Cinema 5, Ltd. ("Cinema 5"). I make this affidavit in connection with the defendant's motion to disqualify our attorneys, Webster Sheffield Fleischmann Hitchcock & Brookfield ("Webster Sheffield").

2. I have been President of Cinema 5 since it was incorporated in 1963 to engage in the business of distributing motion pictures. Prior to that time, I was President of Rugoff Theatres, Inc. and its predecessor corporations. When Cinema 5 became a publicly owned corporation in 1968, Rugoff Theatres, Inc. and its affiliated companies became subsidiaries and affiliates of Cinema 5. Rugoff Theatres, Inc. and its affiliates were and are in the business of owning, managing and operating motion picture theatres.

Affidavit of Donald S. Rugoff

3. Webster Sheffield has represented Rugoff Theatres, Inc. and its affiliates since 1958 and they have continued to act as general counsel for the exhibition portion of our business since Rugoff Theatres, Inc. and its affiliates became affiliated with Cinema 5. Since the incorporation of Cinema 5, Guggenheimer & Untermeyer have been its general counsel. Webster Sheffield has also provided general corporate legal services to Cinema 5 and represented Cinema 5 in most of its litigation.

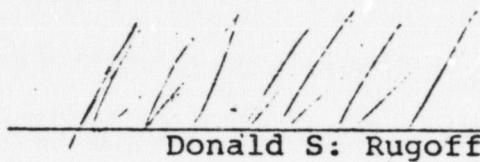
4. Webster Sheffield has represented Rugoff Theatres, Inc. and Cinema 5 over many years and is fully familiar with our business and legal problems. Webster Sheffield has been involved in this lawsuit since its inception and is fully familiar with it. If Webster Sheffield were disqualified from representing us in this action, Cinema 5 would be greatly prejudiced.

5. Not only would Cinema 5 be put to the substantial expense of retaining new trial counsel, but Cinema 5 would be deprived of the counsel of its choice on whom it has relied heavily for many years. New trial counsel would know nothing about the legal and factual issues of the case and would have to spend substantial time becoming familiar with the case. This would create substantial delay, which would be extremely prejudicial to Cinema 5. I am informed that pre-trial discovery has been delayed because of this motion as well as our ability to bring on a motion for a preliminary injunction. Cinema 5 would also be put to substantial expense in having new trial counsel become familiar with the legal and factual issues in

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Affidavit of Donald S. Rugoff

the case. Of equal importance, Cinema 5 would be deprived of counsel on whom it has relied for legal advice over the years, with whom it has developed an excellent working relationship and in whom it has complete confidence.



Donald S. Rugoff

Sworn to before me this
17th day of October, 1974.

John J. O'Connell
Notary Public

JOHN J. O'CONNELL
Notary Public, State of New York
No. 60-4506874
Qualified in Westchester County
Commission expires March 30, 1976

Affidavit of Simon Rose, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CINEMA 5, LTD.,

Plaintiff,

- against -

74 Civ. 3549

(C.L.B., Jr.)

CINERAMA, INC., NATIONWIDE THEATRES
CORP., CONSOLIDATED AMUSEMENT CO.,
LTD., PACIFIC THEATRES CORPORATION,
ATLANTIC THEATRES CORP. OF CALIFORNIA,
RKO-STANLEY WARNER THEATRES, INC.,
WILLIAM R. FORMAN, MICHAEL R. FORMAN
and JAMES J. COTTER,

: AFFIDAVIT IN SUPPORT
OF DEFENDANTS' MOTION
: TO DISQUALIFY PLAINTIFF'S
COUNSEL

Defendants.

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

SIMON ROSE, being duly sworn, deposes and says:

1. I am a member of the firm of Phillips, Nizer, Benjamin, Krim & Ballon, attorneys for defendants, and submit this affidavit in support of defendants' motion to disqualify plaintiff's counsel Webster Sheffield Fleischmann Hitchcock & Brookfield ("Webster Sheffield") from continuing its representation of plaintiff in the instant action.

2. The facts which give rise to the motion are set forth in the Stipulation of Facts submitted to the Court and will not be repeated here. The purpose of this Affidavit is to demonstrate there is a substantial relationship between the two

Affidavit of Simon Rose, Esq.

cases pending in the United States District Court for the Western District of New York in which Cinerama, one of the defendants, is represented by Mr. Fleischmann's Buffalo firm of Jaeckle Fleischmann & Mugel ("Jaeckle Fleischmann") and the instant action where Mr. Fleischmann's New York firm of Webster Sheffield acts as counsel for plaintiff Cinema 5, Ltd. against Cinerama, its affiliated corporations and certain directors of those corporations.

3. In substance, the complaint in the first action in the United States District Court for the Western District of New York, Lyell Theatre Corporation and Martina Theatre Corporation v. Loews Corporation, et al, Civ. 1971-571 (action No. 1) charges all defendants with conspiring to restrain trade in the business of distributing and exhibiting motion pictures in violation of the anti-trust laws of the United States and thereby damaging plaintiffs' business as an operator of motion pictures in Rochester (¶ 19).

Paragraph 18 of the complaint alleges:

"18. The feature motion pictures distributed by the Distributor Defendants* have, during the past four years, shared more than half of the total box office market for all feature motion picture films distributed in the United States during said period. It is impossible for any exhibitor to compete in his area without access to the films of the Distributor Defendants."

4. Mr. Fleischmann's Buffalo firm was retained to represent Cinerama in action No. 1 in January, 1972. Recognizing

* Cinerama is one of the Distributor Defendants.

Affidavit of Simon Rose, Esq.

the need for extensive background information to enable it effectively to undertake that representation, Mr. Fleischmann's letter to Cinerama's Los Angeles counsel dated March 2, 1972* stated:

"Before we can properly and adequately proceed any further with a meaningful defense to plaintiffs' action, we are in need of a great deal of information concerning the nature and extent of the activities of Cinerama, Inc. and Cinerama Releasing Corporation and in particular their activities in the area to which this action pertains." (emphasis added)

5. In the course of its representation of Cinerama, Jaeckle Fleischmann has filed an Answer to the Complaint; Answers and Supplemental Answers to Plaintiffs' Interrogatories; Responses to Plaintiffs' Second Set of Interrogatories; and a Reply to Plaintiffs' First Request for Admissions.** It is apparent from these documents that the information furnished by Cinerama to Jaeckle Fleischmann was not confined to Cinerama's activities in the Rochester area (see answers to interrogatories 8 and 13).

6. In or about March, 1974 Jaeckle Fleischmann was retained to represent Cinerama in the second action in the United States District Court for the Western District of New York, Lyell T. Theatre Corporation v. Columbia Pictures Industries, Inc., et al, Civ. 74-132 (action No. 2). This is an anti-trust suit similar to action No. 1 and relates to motion

* The letter is included as part of Exhibit D to the Stipulation of Facts.

** Copies of these documents are annexed to the Stipulation of Facts as Exhibit C.

Affidavit of Simon Rose, Esq.

picture distribution in Buffalo, New York. Answer has been filed on behalf of Cinerama and the action is pending.

7. The complaint in the instant action asserts that both Cinema 5 and Cinerama are engaged in the business of distributing films and operating motion picture theatres (¶¶ 3 and 4) and alleges, inter alia, a conspiracy to violate the anti-trust laws by all defendants. Paragraphs 36 and 38 allege:

"36. RKO is a subsidiary of Cinerama. Both companies are controlled by Forman, whose entertainment empire includes over 350 motion picture theatres located in the United States and foreign countries. Forman's huge resources give him and his companies enormous power and leverage in competing against other firms in the industry."

"38. The effect of defendants' acquisition of Cinema 5, so that the combined film buying power of RKO and Cinema 5 may be used to restrain competition in the acquisition and exhibition of first-run films in Manhattan, may be substantially to lessen competition or to tend to create a monopoly in New York City's first-run motion picture theatre market, all in violation of Section 7 of the Clayton Act, in that:

....

(iii) Forman's planned theatre complex in New York City (Cinema 5-RKO) will be able to foreclose competition far beyond what its approximately 33% market share would suggest, due to Forman's enormous leverage and buying power in the motion picture industry as a whole;

...."

8. Since these allegations extend to Cinerama's worldwide activities in the motion picture industry, they bear a direct relationship to the allegations as to Cinerama's practices in Rochester and Buffalo which are the subject of

Affidavit of Simon Rose, Esq.

actions 1 and 2. Undoubtedly in these circumstances, Cinerama will be inhibited from disclosing to its attorneys in those actions "all facts pertinent to their cause" (see T.C. Theatre Corp. v. Warner Bros. Pictures, 113 F. Supp. 265 (S.D.N.Y. 1953 cited at p. 9 of the supporting memorandum) so long as Webster Sheffield continues to represent Cinema 5 in this action. I respectfully submit that having established a direct relationship between the cases, disqualification is required. Id. at pp. 268-69.

9. In an affidavit submitted in connection with this motion, Mr. Donald S. Rugoff asserts that if Webster Sheffield were disqualified from representing Cinema 5 in this action it would "be put to the substantial expense of retaining new trial counsel". However, immediately defendants were served with the complaint they raised the question of conflict (see the Fleischmann aff. ¶ 6) and, for all practical purposes, the action has been in abeyance pending a resolution of this issue. It is therefore difficult to see what substantial expenses would be involved if Cinema 5 were required to engage new counsel*. Finally, it should be observed that a lawyer is not permitted to decide which client he will continue to represent

* Cinerama has received bills of almost \$4,000 from Jaekle Fleischmann for services rendered in actions 1 and 2 to November 17, 1973 and services have been rendered since that date.

Affidavit of Simon Rose, Esq.

in situations where a conflict arises. (See Estates Theatres, Inc. v. Columbia Pictures Indus., Inc., 345 F. Supp. 93 (1972) at p. 100.)

Sworn to before me this
4th day of October,
1974.

Diane Sardinas

DIANE SARDINAS
Notary Public, State of New York
No. 03-3454435
Qualified in Bronx County
Cert. Filed in Bronx County
Commission Expires March 30, 1975

Simon Rose

Simon Rose

Memorandum and Order of
Judge Charles L. Brieant, Jr.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

CINEMA 5, LTD., :
Plaintiff, : 74 Civ. 3549
-against- :
CINERAMA, INC., et al., : MEMORANDUM
Defendants. : AND
----- X : ORDER

Brieant, J.

Plaintiff in this civil anti-trust case sues to recover damages for anti-trust violations arising out of alleged efforts by defendants to "restrain competition in the acquisition and exhibition of first-run films in Manhattan" (Complaint ¶21) by acquiring stock in plaintiff. Cinerama, Inc., one of the claimed malefactors sued herein, has moved to disqualify plaintiff's New York City law firm from further representation of it in this litigation, upon claimed conflict of interest.

At a hearing before me on October 18, 1974, the parties and attorneys agreed to waive an evidentiary hearing and consented that the motion be submitted upon a stipulation

Memorandum and Order of Judge Charles L. Brieant, Jr.

of facts and affidavits.

The conflict is said to arise from representation of movant and its wholly owned subsidiary as defendants in two other civil anti-trust actions in W.D.N.Y. presently pending. The complaints there charge conspiracy to restrain trade in the business of distributing and exhibiting films "in and around Rochester, New York," and "in the Buffalo, New York metropolitan area" respectively.

In the Western New York cases, movant is represented by a regional law firm, which has no relationship with the firm sought to be disqualified here, except that one attorney is a partner both of the New York City firm and that firm. He divides his time between the two firms, and at least from about January 27, 1972 until May 27, 1972, had direct responsibility for the defense of the Western New York cases. He had no direct personal relationship with the instant case, nor has he imparted any knowledge whatever to his New York City partners. The cases are unrelated, but each requires extensive, specialized knowledge on the part of counsel concerning the booking and distribution of motion pictures generally, although in different market areas.

The value and nature of the prior representation

Memorandum and Order of Judge Charles L. Brieant, Jr.

is minimal, as evidenced by time charges incurred in an amount less than \$4,000.00. The connection between the two firms is limited to the fact that they share one partner in common;

Movant's protestations taste of crocodile tears. Nevertheless, there is sufficient relationship between the two lawfirms, and the two controversies to suggest that future confidential communications in the prior cases will be inhibited (T. C. Theatre Corp. v. Warner Bros., 113 F.Supp. 265, 269) and accordingly "disqualification is required to avoid even the appearance of professional impropriety" General Motors Corporation v. City of New York, 501 F.2d 639 (2d Cir. 1974). See also Estates Theatres, Inc. v. Columbia Pictures Industries, Inc., 345 F.Supp. 93 (S.D.N.Y. 1972).

Such disqualification extends to partners and associates of one so disqualified. Consolidated Theatres, Inc. v. Warner Brothers, 216 F.2d 920 (2d Cir. 1954).

The motion is granted. As this order is appealable (see Ceramco, Inc. v. Lee Pharmaceuticals, ____ F.2d ____ (2d Cir., Jan. 30, 1975; Docket No. 74-1757, 1858)), all proceedings shall be held in abeyance until thirty (30) days following

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Memorandum and Order of Judge Charles L. Brieant, Jr.

appellate finality, unless otherwise ordered by this Court.

SO ORDERED.

Dated: New York, New York
February 14, 1975

CHARLES L. BRIEANT, JR. *C. L. B. Jr.*
CHARLES L. BRIEANT, JR. ✓
U. S. D. J.

Affidavit of Donald J. Cohn, Esq.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----- x

CINEMA 5, LTD.,

:

Plaintiff,

:

-against-

: 74 Civ. 3549
(C.L.B., Jr.)CINERAMA, INC., NATIONWIDE THEATRES
CORP., CONSOLIDATED AMUSEMENT CO.,
LTD., PACIFIC THEATRES CORPORATION,
ATLANTIC THEATRES CORP. OF CALIFORNIA,
RKO-STANLEY WARNER THEATRES, INC.,
WILLIAM R. FORMAN, MICHAEL R. FORMAN
and JAMES J. COTTER,

:

AFFIDAVIT

:

:

Defendants.

:

----- x

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

DONALD J. COHN, being duly sworn, deposes and says:

1. I am a partner in the firm of Webster Sheffield Fleischmann Hitchcock & Brookfield, attorneys for the plaintiff, and submit this affidavit pursuant to the order of this Court dated April 3, 1975 in support of plaintiff's motion for argument. The purpose of this affidavit is to bring to the court's attention certain facts which have occurred since the time the original motion to disqualify was submitted to the court.

2. There are three legal proceedings pending which are relevant to this motion. In this case, Cinema 5, Ltd. ("Cinema 5") seeks to prevent an alleged illegal takeover of

Affidavit of Donald J. Cohn, Esq.

Cinema 5 by William Forman and corporations controlled by him, which include Cinerama Inc. ("Cinerama") and Consolidated Amusement Co., Ltd. ("Consolidated"). As soon as the complaint in this case was filed, defendants sought to disqualify plaintiff's attorneys.

On October 4, 1974, one of the defendants in this case, Consolidated, filed a derivative action against Cinema 5, its directors, and certain purchasers of its stock. This case has also been assigned to Your Honor and alleges basically that the defendants were engaged in a conspiracy illegally to retain control of Cinema 5. On October 30, 1974, Consolidated obtained an order to show cause in New York County Supreme Court seeking production of the Cinema 5 stockholder's list.

As stated in Cinema 5's memorandum in support of its motion for reargument, the actions taken by Forman, through Consolidated, in the derivative action and in seeking a stockholder's list are compelling proof that there is no conflict of interest, and that the motion to disqualify has been used to gain a tactical advantage by preventing Cinema 5 from moving ahead with this case while Consolidated tried to push ahead with the proceedings it brought against Cinema 5.

Proceedings in Consolidated's Derivative Action

3. In November, 1974, the Cinema 5 directors and the defendant purchasers filed answers which denied the allegations of the complaint and raised affirmative defenses,

Affidavit of Donald J. Cohn, Esq.

one of which reads as follows:

"The plaintiff cannot fairly and adequately represent the interests of the other shareholders of Cinema 5 in this action in that plaintiff is itself involved in an illegal attempt to gain control of Cinema 5 in violation of the federal securities and antitrust laws, for the benefit of others and to the detriment of Cinema 5 and its shareholders, as more particularly set forth in the Verified Complaint in Cinema 5, Ltd. v. Cinerama, Inc., et al., 74 Civ. 3549 (C.L.B., Jr.), filed in this Court on August 15, 1974."

The directors and purchasers are represented by this firm. Cinema 5 has separate counsel and raised the same affirmative defense. (See ¶24 of Cinema 5 Answer). Thus, the defendants in response to Consolidated's derivative action raised exactly the same issues which exist in this case.

4. On November 5, 1974, defendants filed a notice to depose Consolidated through William and Michael Forman and James J. Cotter, together with a request for the production of documents. Consolidated also served on November 5, 1974, notices to depose Donald S. Rugoff and Francis Ford Coppola. On November 11, 1974, Consolidated served a request to produce documents. After several conversations between counsel, the deposition of Consolidated was scheduled for December 12, 13 and 14, 1974, and of Rugoff on December 19, 1974. These depositions were adjourned because Mr. Rugoff became ill. In early February, 1975, counsel for Consolidated called me and stated he wished to commence discovery and sought to arrange new schedules. We agreed to assemble documents pursuant to the requests and communicate again when the documents were ready. No discovery has yet taken place.

Consolidated's Proceeding to Obtain Stockholder's List

5. On October 30, 1974, Consolidated obtained an order to show cause in New York County Supreme Court, seeking production of the Cinema 5 stockholder's list. On November 12, 1974, Cinema 5, represented by this firm, filed a verified answer in which Cinema 5 again raised the same issue involved in this lawsuit. A copy of Consolidated's petition and Cinema 5's answer is attached hereto as Exhibits A and B, respectively. A copy of the complaint in this action was attached and made a part of Cinema 5's verified answer which alleged:

"Denies each and every allegation of paragraph 7 and alleges that petitioner desires inspection of the minutes of shareholders' proceedings and the record of shareholders of Cinema 5 in the interest of a business or object other than the business of Cinema 5; to wit, in the interest of William R. Forman ("Forman"), who controls petitioner, and other corporations controlled by Forman, and to assist Forman and said corporations illegally to obtain control of Cinema 5, as more particularly set forth in the Verified Complaint in Cinema 5, Ltd. v. Cinerama, Inc., et al., 74 Civ. 3549 (CLB, Jr.) filed August 15, 1974 in the United States District Court for the Southern District of New York, attached hereto as Exhibit A and made a part hereof. Petitioner is named as a defendant in that case along with Forman and other corporations he controls."

Cinema 5 also moved to stay the proceeding in New York County Supreme Court on the ground that the actions then pending in federal court involved exactly the same issues. Consolidated opposed the motion for stay, contending that no issue of fact with regard to its good faith had been raised.

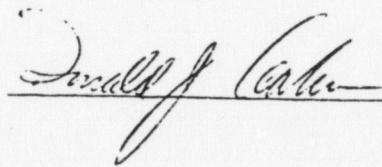
In his decision of December 6, 1974, attached hereto as Exhibit C, Mr. Justice Fine held Consolidated's application

Affidavit of Donald J. Cohn, Esq.

and Cinema 5's motion in abeyance pending a report of a special referee on the issues of the good faith of Consolidated and whether the application was made for proper purposes. It was clear to Mr. Justice Fine that although Consolidated was the nominal petitioner, Forman was the moving force in that proceeding. He stated:

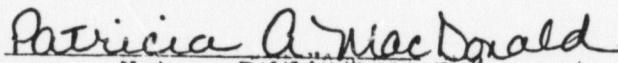
"A reading of his [William R. Forman's] affidavit in support of petitioner's [Consolidated's] application clearly shows that he is the prime mover in this proceeding."

6. Thus, the same issues which have been raised in this lawsuit involving Forman, Cinerama and Consolidated have been raised also in two other actions commenced by Consolidated which is owned and controlled by Forman who also controls Cinerama. Cinema 5 contends that just as Forman was the "prime mover" in the stockholder's list proceeding, he is the "prime mover" here and in the derivative suit. In both proceedings brought by Consolidated, issues have been raised that Forman is seeking illegally to gain control of Cinema 5 for his own and Cinerama's benefit. Notwithstanding the identity of the issues and the parties, there has been a motion to disqualify Cinema 5's counsel in this case, but none in the proceedings brought by Consolidated, which it has sought to press forward.



Sworn to before me this

16 day of April, 1975.



Notary Public, State of New York

Reg. #1-2-1100

Qualified in Oneida County
Commissioned April 1, 1977
Commission Expires March 31, 1978

EXHIBIT A ANNEXED TO AFFIDAVIT OF
DONALD J. COHN, ESQ.SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x

In the Matter of the Application

of

CONSOLIDATED AMUSEMENT CO., LTD.,

PETITION

Petitioner,

Index No.

for an order pursuant to Section 624
of the Business Corporation Law per-
mitting the inspection and copying
of the minutes of the proceedings of
the shareholders and the record of
shareholders of Cinema 5, Ltd.

-----x

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

The petition of Consolidated Amusement Co., Ltd.
("petitioner") respectfully shows to this Court and alleges:

1. Petitioner is a corporation organized and
existing under the laws of the State of Hawaii with its
principal place of business at 510 South Street, Honolulu,
Hawaii.

2. Cinema 5, Ltd. is a corporation organized and
existing under the laws of the State of New York with its
principal place of business at 595 Madison Avenue, New York,
New York.

Exhibit A Annexed to Affidavit of Donald J. Cohn, Esq.

3. Petitioner is, and for more than six months prior to the date of the demand for inspection hereinafter mentioned was the owner of record and holder of 168,167 common shares of Cinema 5, Ltd., constituting more than 5% of its outstanding common shares.

4. On September 16, 1971, pursuant to Section 624 of the Business Corporation Law, petitioner mailed a written demand (copy of which is annexed as Exhibit 1) to Cinema 5, Ltd. to examine and make extracts from the minutes of the shareholder proceedings and the record of shareholders during business hours pursuant to Section 624 of the Business Corporation Law, together with an affidavit (copy of which is annexed as Exhibit 2) in compliance with Section 624(c) affirming that:

(a) the inspection requested is not desired for the purpose of a business or object other than the business of Cinema 5, Ltd., and

(b) petitioner has not within five years sold or offered for sale any list of shareholders of any corporation, domestic or foreign, or aided or abetted any person in procuring any such list for any such purpose.

Exhibit A Annexed to Affidavit of Donald J. Cohn, Esq.

5. On September 23, 1971, counsel for Cinema 5, Ltd. informed counsel for petitioner that Cinema 5, Ltd. refused to permit petitioner to see or copy the minutes of the shareholders' proceedings or the record of shareholders.

6. Petitioner has not seen nor had any inspection of the minutes of the shareholders' proceedings or the record of shareholders of Cinema 5, Ltd. and petitioner asserts that it is entitled as a matter of right to have such inspection.

7. Petitioner seeks such inspection for the following reasons:

(a) to determine whether it should communicate with other shareholders with respect to the present condition of Cinema 5, Ltd. and the election of new directors;

(b) to estimate the expense which might be incurred should petitioner elect to solicit proxies in connection with the next election of directors of Cinema 5, Ltd. and to determine the likelihood of success of such a solicitation;

(c) to determine whether a shareholders' committee should be formed; and

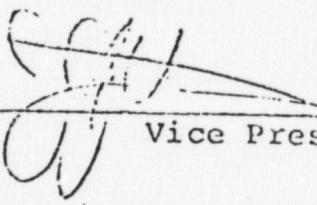
Exhibit A Annexed to Affidavit of Donald J. Cohn, Esq.

(d) to exchange views with other shareholders of Cinema 5, Ltd. regarding matters deemed advisable or necessary in the best interests of Cinema 5, Ltd. and its shareholders.

8. Petitioner is proceeding by order to show cause because Section 624 (d) of the Business Corporation Law requires that application be made on such notice as the Court may direct in a show cause order.

9. No previous application has been made for the relief sought herein.

CONSOLIDATED AMUSEMENT CO., LTD.
Petitioner

By: 

Vice President

PHILLIPS, NIZER, BENJAMIN, KRIM
& BALLON
Attorneys for Petitioner
40 West 57th Street
New York, New York
Telephone No.: (212) 977-9700

EXHIBIT B ANNEXED TO AFFIDAVIT OF
DONALD J. COHN, ESQ.SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- x

In the Matter of the Application :
of :
CONSOLIDATED AMUSEMENT CO., LTD., : VERIFIED ANSWER
Petitioner, : Index No. 16439-1974
for an order pursuant to Section 624 :
of the Business Corporation Law per- :
mitting the inspection and copying :
of the minutes of the proceedings of :
the shareholders and the record of :
shareholders of Cinema 5, Ltd. :
----- x

Respondent, Cinema 5, Ltd. ("Cinema 5"), by its
attorneys, Webster Sheffield Fleischmann Hitchcock & Brookfield
for its answer to the petition herein:

1. Denies each and every allegation of paragraph 1
except alleges, on information and belief, that petitioner is
a corporation organized and existing under the laws of the
State of Hawaii.

2. Admits the allegations of paragraph 2.

3. Admits the allegations of paragraph 3 and alleges
that Nationwide Theatres Corp., plaintiff's parent, purchased
at least 48,300 shares of Cinema 5's common stock and that
persons or corporations affiliated with petitioner own or
control additional shares of Cinema 5 common stock.

Exhibit B Annexed to Affidavit of Donald J. Cohn, Esq.

4. Denies each and every allegation of paragraph 4 and alleges that it received on September 19, 1974 an undated letter from petitioner together with an affidavit, copies of which are attached to the petition as Exhibit 1 and to which the court is respectfully referred for their contents.

5. Admits the allegations in paragraph 5 and alleges that counsel for Cinema 5 also informed counsel for petitioner that the reason for the refusal was that the request was desired for a purpose which is in the interest of a business or object other than the business of Cinema 5 as previously alleged in Cinema 5, Ltd. v. Cinerama, Inc., et al., see paragraph 7 below.

6. Denies each and every allegation of paragraph 6 and alleges that Cinema 5 has not produced the minutes of shareholders' proceedings or the record of shareholders of Cinema 5 pursuant to the request as set forth in Exhibit 1 attached to the petition.

7. Denies each and every allegation of paragraph 7 and alleges that petitioner desires inspection of the minutes of shareholders' proceedings and the record of shareholders of Cinema 5 in the interest of a business or object other than the business of Cinema 5; to wit, in the interest of William R. Forman ("Forman"), who controls petitioner, and other corporations controlled by Forman, and to assist Forman and

Exhibit B Annexed to Affidavit of Donald J. Cohn, Esq.

said corporations illegally to obtain control of Cinema 5, as more particularly set forth in the Verified Complaint in Cinema 5, Ltd. v. Cinerama, Inc., et al., 74 Civ. 3549 (CLB, Jr.) filed August 15, 1974 in the United States District Court for the Southern District of New York, attached hereto as Exhibit A and made a part hereof. Petitioner is named as a defendant in that case along with Forman and other corporations he controls.

WHEREFORE, respondent Cinema 5, Ltd. demands judgment dismissing the petition herein with the costs and disbursements of this action.

Dated: New York, New York

November 12, 1974

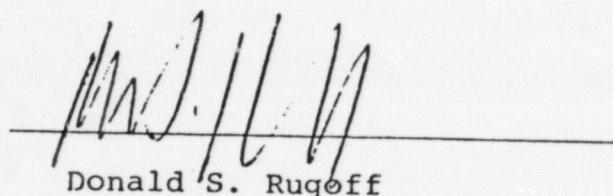
WEBSTER SHEFFIELD FLEISCHMANN
HITCHCOCK & BROOKFIELD
Attorneys for Respondent
Cinema 5, Ltd.
One Rockefeller Plaza
New York, New York 10020
Tel. No.: (212) 582-3370

133a
Certification

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

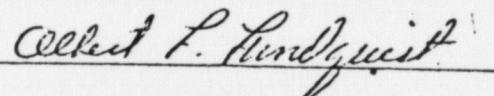
DONALD S. RUGOFF, being duly sworn, deposes and
says:

I am the President of the respondent, Cinema 5, Ltd. herein; I have read the foregoing answer and know the contents thereof; the same is true of my own knowledge except as to the matters therein stated to be alleged upon information and belief and as to those matters I believe it to be true.



Donald S. Rugoff

Sworn to before me this
12th day of NOVEMBER, 1974.



Albert L. Lindquist

Notary Public
ALBERT LINDQUIST
Notary Public, State of New York
No. 41-2426/60 - Queens County
Certificate filed in New York County
Term Expires March 30, 1975

EXHIBIT C ANNEXED TO AFFIDAVIT OF
DONALD J. COHN, ESQ.

SUPREME COURT: NEW YORK COUNTY

SPECIAL TERM : PART I

In the Matter of the Application

of

CONSOLIDATED AMUSEMENT CO., LTD.,

Petitioner,

for an order pursuant to Section 624 of the Business Corporation Law permitting the inspection and copying of the minutes of the proceedings of the shareholders and the record of shareholders of Cinema 5, Ltd.

INDEX NO. 16439/74

FINE, J.:

Petitioner, pursuant to Business Corporation Law Section 624 seeks an order compelling inspection of the minutes of the shareholders' meetings and the records of the of the shareholders respondent, Cinema 5, Ltd.

Respondent moves to stay this proceeding on the ground that there is a prior action pending in the United States District Court for the Southern District of New York, involving the same issues.

These are consolidated for disposition.

Exhibit C Annexed to Affidavit of Donald J. Cohn, Esq.

Petitioner is a Hawaiian corporation which together with its parent corporation, Nationwide Theatres Corp., owns some 26% of the outstanding shares of respondent. One William R. Forman and members of his family wholly own petitioner and it is not denied that Forman owns nationwide. He is an important figure in the film distribution and exhibition industry. A reading of his affidavit in support of petitioner's application clearly shows that he is the prime mover in this proceeding.

He claims that the stock was purchased as an investment. It is contended that the reason for which the inspection is desired is:

- 1) to determine whether petitioner should communicate with other shareholders with respect to the present condition of respondent and the election of new directors;
- 2) to estimate the expenses of a proxy fight and the likelihood of success;
- 3) to determine whether a shareholders' committee should be formed; and
- 4) to communicate with other shareholders of respondent on matters deemed advisable or necessary in the best interest of respondent and its shareholders.

In opposition to the petitioner, it is averred that the records sought are not for the benefit of respondent but to serve the interest of Forman in an illegal scheme to acquire control of respondent for his own purposes.

Exhibit C Annexed to Affidavit of Donald J. Cohn, Esq.

It is noted that prior to the commencement of this proceeding, respondent had commenced an action in the Federal Court alleging that petitioner and others including Nationwide and Forman are conspiring illegally to take over respondent and enjoin them. In addition petitioner has instituted a derivative action in that court prior to this proceeding.

In order to allow the inspection here requested the Court must believe that the application is made in good faith and for proper purposes with respect to the corporation.

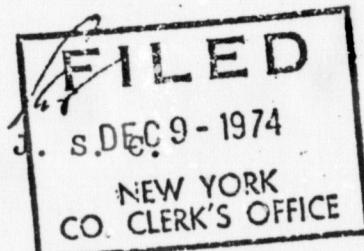
On the conflicting papers submitted in support and against the application the court cannot and should not summarily dispose of this matter without a hearing.

Accordingly, the issues of good faith of petitioner and whether the application is made for proper purposes is referred to Hon. Edward Byer, to hear and report, together with recommendations.

Pending receipt of his report, determinations of these motions are held in abeyance.

Counsel are directed to serve a copy of this order within five days after publication on the office of the Referees, Room 308-M, for the purpose of arranging a hearing date.

Dated: December 6th, 1974



Affidavit of Janet P. Kane, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

CINEMA 5, LTD., :

Plaintiff, : 74 Civ. 3549
(C.L.B., Jr.)

-against-

CINERAMA, INC., et al., : OPPOSING AFFIDAVIT

Defendants. :

----- x

STATE OF NEW YORK)

: ss.: :

COUNTY OF NEW YORK)

JANET P. KANE, being duly sworn, deposes and says:

1. I am an attorney associated with the firm of Phillips, Nizer, Benjamin, Krim & Ballon, attorneys for defendants, and am fully familiar with this action and other pending litigation between the parties hereto. Pursuant to leave granted by the Court in its order of April 3, 1975, I submit this affidavit in opposition to plaintiff's motion to reargue the motion of defendant Cinerama, Inc. ("Cinerama") to disqualify plaintiff's attorneys.

2. By order dated February 14, 1975, this Court granted the motion to disqualify on the ground that a member of the firm representing plaintiff in this antitrust action is also a member of the firm representing Cinerama as defendant in two antitrust actions previously brought in the Western District of New York

Affidavit of Janet P. Kane, Esq.

and "there is sufficient relationship between the two law firms, and the two controversies so suggest that future confidential communications in the prior cases will be inhibited" (Order dated February 14, 1975 at 3).

3. The affidavit in support of reargument does not set forth a single fact which alters in any respect the basis of the Court's original ruling, namely, the relationship of the parties and their attorneys in this antitrust action and the two Western District antitrust actions, both of which are still pending. Nor does the supporting memorandum cite any controlling decision which has been overlooked by this Court. To the contrary, as discussed in defendants' memorandum, Hull v. Celanese Corporation, the case on which plaintiff relies, is authority for the propriety - indeed, the necessity - of disqualification in the circumstances presented.

4. The matters which plaintiff claims "have occurred since defendants' motion was submitted . . . and were not before the Court" (plaintiff's memorandum at 2) are two lawsuits to which Cinerama is not a party, both of which were commenced prior to submission of the motion to disqualify: (1) a derivative action brought in this District by Consolidated Amusement Co., Ltd. ("Consolidated")* charging plaintiff, its directors and

* Cinerama is a publicly owned corporation. Consolidated is owned by Mr. William Forman. Mr. Forman is a Cinerama stockholder. Consolidated, however, is not an affiliate or subsidiary of Cinerama. Consolidated's business is confined to the operation of a chain of motion picture theatres in Hawaii. Unlike plaintiff and Cinerama, Consolidated is not engaged in the distribution of motion picture films.

Affidavit of Janet P. Kane, Esq.

certain purchasers of plaintiff's stock with violations of the federal securities laws (74 Civ. 3457), and (2) a special proceeding in the Supreme Court of the State of New York brought by Consolidated, as a stockholder of plaintiff, to enforce its statutory right to inspect plaintiff's list of stockholders (N.Y. Co. Index No. 16439/74).

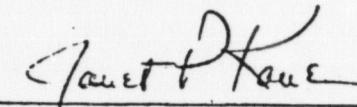
5. The derivative action was not only commenced prior to submission of the disqualification motion, it was consolidated with this action before that date. Moreover, different counsel have been retained by plaintiff in the two actions; counsel for plaintiff herein represent only the defendant directors and purchasers in the derivative action.

6. As is apparent from the supporting affidavit, no antitrust issue is raised by the complaint in the derivative action or the petition in the stockholder's proceeding. That issue is raised solely by way of affirmative defense. Antitrust, which is at the heart of the relationship between this action and the Western District actions, is a peripheral issue in the litigation brought by Consolidated.

7. If the existence of this peripheral issue can be regarded as resulting in a "substantial relationship" between this action and the Consolidated litigation, it clearly calls

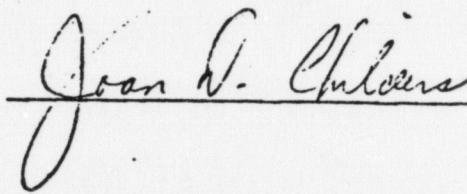
Affidavit of Janet P. Kane, Esq.

for the enlargement of this Court's disqualification order to embrace that litigation and not the reversal of the order which plaintiff seeks.



Janet P. Kane

Sworn to before me this
28th day of April, 1975.



JOAN D. CHILDERS
Notary Public, State of New York
No. A1-175160
Qualified in Ulster County
Cert. Exp'd with N.Y. Co. Clerk
Term Expires March 30, 1973

Transcript of Proceedings Before
Judge Charles L. Brieant, Jr.

1 JBjw

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2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 CINEMA 5, LTD., :
6 Plaintiff,

7 -vs- : 74 Civ. 3549

8 CINERAMA, INC.,

9 Defendant. :
10 -----x

11 May 7, 1975

13 B E F O R E :

14 HON. CHARLES L. BRIEANT, JR.,

15 District Judge.

17 A P P E A R A N C E S :

18 WEBSTER, SHEFFIELD, FLEISCHMANN, HITCHCOCK
& BROOKFIELD

19 Attorneys for Plaintiff

20 DONALD J. COHN, ESQ.,

21 JAMES V. KEARNEY, ESQ., of Counsel

22 PHILLIPS, NIZER, BENJAMIN, KRIM & BALLOU, ESQ.,

23 Attorneys for Defendant

24 SIMON ROSE, ESQ.,

25 JANET KANE, of Counsel

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2 THE COURT: Good morning.

3 Which of you wishes to be heard in support
4 of the motion?

5 MR. COHN: It's our motion for the argument.

6 I am Donald Cohn and we represent Cinema 5.

7 THE COURT: You may be heard in support
8 of the motion.

9 MR. COHN: Your Honor, when the original
10 motion was submitted, the parties concentrated on, in
11 effect, two cases -- the ones in Buffalo and in Rochester
12 which I will refer to as the Buffalo cases, and this case
13 brought by Cinema 5 against Cinerama and related defendants.

14 Since the motion was submitted I believe
15 that two other proceedings brought by one of the defendants
16 in this case are relevant to the issue of our disqualifica-
17 tion and those two proceedings are brought by Consolidated
18 Amusement Company, a defendant here, which is owned and
19 controlled by William Forman who also owns and controls
20 Cinerama, Inc.:

21 One action which is also assigned to your
22 Honor is a derivative case in which Cinema 5, its directors
23 and certain purchasers of stock are defendants and we
24 represent the directors and purchasers in that case,
25 Cinema 5 having other counsel.

2 Basically, Consolidated wishes to set aside
3 some sales of stock to approve their voting power in the
4 company.

5 In that case, all the defendants, including
6 the corporation, have raised exactly the same issues
7 which were raised in this case by affirmative defense.
8 The answer says that Consolidated cannot bring an action
9 in behalf of the other stockholders because they are
10 involved in an illegal takeover as alleged in this com-
11 plaint so that the same issues exist in that derivative
12 case as exist in this case.

13 The second proceeding brought by --

14 THE COURT: What is your position in that
15 derivative case?

16 MS. COHN: We represent the directors of
17 Cinema 5 and the purchasers of the stock, the purchasers
18 of stock which is trying to be set aside.

19 THE COURT: All right.

20 MR. COHN: Now, Consolidated also brought a
21 proceeding in New York State Supreme Court --

22 THE COURT: Your right to represent those
23 people has not been attacked.

24 MR. COHN: No, your Honor; that is correct.
25 Consolidated also brought a proceeding in New York State

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2 Supreme Court to obtain a stockholders list of Cinema 5.
3 We represent Cinema 5 in that action and we are a respon-
4 dent. In that proceeding we moved to stay the whole
5 proceeding in the State Court on the ground that there
6 were exactly the same issues involved over here in Federal
7 Court, which were started first, and that the State Court
8 should stay the proceedings.

9 In our verified answer in the State Court
10 proceedings, we included by reference the complaint in
11 this case and attached it to our answer, thereby again
12 raising exactly the same issues in the State Court pro-
13 ceeding for a stockholders list as here and Judge Fine
14 referred both the application for a stockholders list and
15 our motion for a stay to a special referee.

16 THE COURT: I take it that you assert in
17 your affidavit that although the defendant Cinerama here
18 took issue with your right to continue as attorneys,
19 no attempt was made to disqualify you in the other two
20 litigations.

21 MR. COHN: That's correct.

22 THE COURT: I fail to see the significance
23 of that because I assume that in that litigation, it
24 would waive any right they might have. They could waive
25 it by inaction, coupled with knowledge or they could

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2 waive it intentionally on the theory that there is no
3 practical reason why you shouldn't be permitted to act and
4 I fail to see the logical connection between the failure
5 of these defendants to object to your firm's representa-
6 tion in these other cases where Cinema 5 is a defendant
7 and its officers and directors are defendants and the
8 instant case in which Cinema 5 is the plaintiff.

9 I would think it would be perfectly proper
10 in all three cases for Cinerama to take the position,
11 "Well, we believe we might move to disqualify you but we
12 decided against doing it and proceed with the litigation."

13 Perhaps you would clear up this problem for
14 me.

15 MR. COHN: Well, your Honor, I think that
16 their failure to take any action to disqualify us in the
17 other two cases coupled with the fact that they wanted
18 to proceed with discovery in the derivative case is not
19 a question of just failing to act; it is a question of
20 saying we want to go ahead with discovery on the same
21 issues and in fact with the same witnesses. We were going
22 to take Consolidated deposition --

23 THE COURT: But what bearing does that have
24 on the instant matter?

25 MR. COHN: I think on two aspects of your Honor's

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2 original memorandum decision in which you found that there
3 was sufficient relationship between the Buffalo cases
4 and this case to inhibit, perhaps, future confidential
5 communications up in Buffalo.

6 Now, I believe that by not only asking us to
7 get out of the other cases but pushing ahead with these
8 cases with the same witnesses, the same issues, I would
9 be taking these depositions exactly in the same manner
10 in a derivative case as if I were taking them in this
11 case.

12 THE COURT: Well, you have no doubt that
13 Cinerama could now step forward and say we are withdrawing
14 our application to disqualify counsel and we are perfectly
15 happy that they continue and we truthfully believe that
16 there won't be any unfair advantage taken of our client
17 and your Honor's order of February 14, 1975 can be vacated
18 nunc pro tunc, you see, and they could do all of that,
19 couldn't they, even at this late date.

20 MR. COHN: Yes, your Honor, they could.

21 THE COURT: The foundation of this prior
22 decision is what has been referred to in recent Second
23 Circuit writing as the appearance of impropriety and
24 I fail to see any significance in the fact that they raised
25 it in this particular action and didn't in two other cases.

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2 It may bear on their sincerity, but the Court
3 is not concerned with that. The Court must grant the
4 motion if the factual circumstance in the case in which
5 the motion is made fall within the doctrine which has been
6 announced in this, I believe it is, General Motors case
7 mentioned in my last opinion. I don't necessarily agree
8 with the doctrine but I believe myself required to follow
9 it.

10 MR. COHN: Yes, your Honor. But I say what
11 has happened since, I think, bears on the determination
12 of "Is there an appearance of impropriety" which I believe
13 must stem from whether the cases which form the alleged
14 basis of the conflict are substantially related.

15 I believe that is the simple issue here.

16 THE COURT: Don't the cases in Western New
17 York involve the factual matrix which includes the ques-
18 tion of whether or not there was antitrust violations or
19 conspiracy or collusion of some kind in the distribution
20 and booking of motion pictures in that area, Western New
21 York?

22 MR. COHN: Yes, your Honor. It is a typical
23 movie antitrust case. An exhibitor says that others ganged
24 up on me and deprived me of product.

25 THE COURT: And isn't it true that in the

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2 factual background of this particular litigation and the
3 other two cases the same thing exists in a different
4 geographic area in the State of New York.

5 MR. COHN: No, your Honor.

6 THE COURT: Tell me why not. But I see no
7 significance in the fact that they brought no motion
8 against you in the other two cases. And I wish you would
9 clear that up for me, if you connect others.

10 MR. COHN: Well, let me go first to your
11 question, your Honor, about whether or not there would
12 be the same issues here as in Buffalo.

13 In Buffalo, as I said, it is a typical movie
14 antitrust case. An exhibitor says the distributors and
15 the other exhibitors ganged up on me and deprived me of
16 product and as your Honor knows it is a run of the mill
17 case and the representation up in Buffalo has been limited.

18 Here we are not dealing with an antitrust
19 case at all but with a typical takeover situation.

20 THE COURT: But the takeover is being opposed
21 on antitrust grounds, isn't it?

22 MR. COHN: Yes, sir, on the ground that if
23 the takeover is successful, Cinerama will control 33
24 percent of the first run theatres in Manhattan which we
25 are going to argue is a per se violation of Clayton. It

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2 has nothing to do with distribution of motion pictures.

3 THE COURT: To prove that issue you have to
4 be very familiar with the various machinations which go
5 on in connection with the booking of motion pictures, don't
6 you?7 MR. COHN: No, your Honor. It has nothing
8 to do with the booking of pictures. We say they are going
9 to control 33 percent of the theatres.10 THE COURT: That has to do with the distribu-
11 tion of pictures.12 MR. COHN: That's the end. The distributor
13 sells to the exhibitor but our argument is that by owning
14 that number of theatres, it is a *per se* violation of the
15 exhibition market in New York. There is really nothing
16 to do with the distribution since the distributors can't
17 give it to anybody else. They are the first run theatres.18 THE COURT: To defend Cinerama adequately
19 in Western New York you have to know all about the history
20 and the background and the procedures and the techniques
21 followed in the distribution and exhibition of motion
22 pictures to the retail consumer, don't you?

23 MR. COHN: In those markets, to some extent.

24 THE COURT: Yes. Western New York. The
25 Court had copies of the pleadings and my understanding

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Colloquy

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2 is that to defend that case properly an attorney would
3 have to find out from his client everything concerning
4 how the pictures find their way from the producer to the
5 viewer in Western New York.

6 MR. COHN: In Buffalo and Rochester.

7 THE COURT: Now it seemed to me, as I recall
8 the matter before when it was before me, that to deal
9 with the affirmative defense in this case an attorney
10 would have to know from his client all relevant informa-
11 tion having to do with the same question or issue only in
12 Southern New York, rather than Western New York and that
13 is an awfully slight differentiation.

14 MR. COHN: That's why I don't think it is
15 the fact because, first of all, there has been no anti-
16 trust violations at all yet and secondly, the thrust of
17 our complaint is that by merely owning or controlling
18 33 percent of the first run motion picture theatres
19 in Manhattan there would be a violation of the Clayton
20 Act, the Philadelphia Bank case; when you get up over 30
21 percent we think it becomes almost a *per se* violation
22 and this really has nothing to do with how the motion
23 pictures are distributed.

24 It is a question of our owning 33 percent
25 of the theatres. I would also like to point out in terms

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2 of the Buffalo case, that the Buffalo firm also represents
3 National General, a competitor of Cinerama, and if there
4 was going to be any inhibition of confidential communica-
5 tions I think that would be the inhibitor a lot more than
6 this case.

7 THE COURT: They are also a name co-conspirator,
8 aren't they? They may not be a conspirator but co-
9 defendants united together and defending together.

10 ME. COHN: They certainly compete elsewhere.

11 THE COURT: The whole thing is getting
12 beyond us and I hope that the Court of Appeals, and they
13 may, because they have a Chrysler Corporation litigation
14 up there now, may deal a little more concretely with
15 this question of appearance of impropriety. Until they
16 do, I have to follow that General Motors case; that's the
17 most recent learning.

18 MR. COHN: Hull v. Celanese, which came down
19 very recently, the Court of Appeals said that they did
20 not want to paint with a broad brush.

21 THE COURT: Well, they disqualified the
22 lawyer in that case, didn't they?

23 MR. COHN: Yes, your Honor, because the
24 cases were exactly the same. "We looked to see whether
25 the cases were substantially related" they said and here

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Colloquy

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2 they are exactly the same and the whole issue was, as I
3 have tried to describe it, is there a substantial enough
4 relationship between the cases which may inhibit the
5 confidential or the next communications between the client
6 and the attorney up in Buffalo and I submit, your Honor,
7 that the cases are not that closely related. I submit
8 they are not related at all.

9 Secondly, there will be no inhibition of
10 confidence because of the defendant's own actions. They
11 are perfectly willing to go ahead on exactly the same
12 issues with the same witnesses in their cases but they
13 want to stop us from going ahead and I think the motion
14 to disqualify, you know, has gained them a substantial
15 tactical advantage and I think that was the basis of it.

16 THE COURT: The only tactical advantage is
17 that it delays litigation and interjecting something which
18 is appealable. That probably is a tactical disadvantage
19 and you can meet that disadvantage very readily. All
20 you have to do is telephone your client and say, look,
21 go on downtown and hire the worst rotter in New York
22 and have him proceed with this litigation, because we are
23 disqualified. That's all you have to do. There is an
24 old German saying, "After the devil comes his grandmother."

25 I think I would like to hear Mr. Rose and I

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2 will give you a brief moment for reply.

3 MR. ROSE: If your Honor please, Mr. Cohn
4 mentions these two proceedings, the derivative action by
5 Consolidated and the petition for a stockholders list as
6 thought they were something, actions that had been
7 instituted subsequent to the submission of our motion for
8 disqualification but in point of fact they had been
9 instituted prior to the motion and indeed the derivative
10 suit had already been consolidated with this action at the
11 time of the submission.

12 Mr. Cohn refers to the fact that we haven't
13 moved to disqualify in these two other cases.

14 So far as the derivative suit is concerned,
15 there are no antitrust allegations made in the complaint
16 by Consolidated and Cinema 5, the defendant in that case,
17 isn't even represented by Mr. Cohn's firm.

18 As to the petition for a stockholders list,
19 obviously that is not --

20 THE COURT: You mean Cinema 5?

21 MR. ROSE: Yes, Cinema 5. I beg your pardon.

22 THE COURT: Who represents them?

23 MR. ROSE: Another law firm and I don't
24 recall the name.

25 MR. COHN: Martin, Obermaier & Morvillo.

2 THE COURT: They are represented by another
3 law firm?

4 MR. COHN: Yes.

5 MR. ROSE: So far as the petition for a
6 stockholders list is concerned, we regard that as stock-
7 holders elementary right and it doesn't involve any ques-
8 tion of antitrust matters and therefore we saw no reason
9 to move to disqualify them in that proceeding. If they
10 have chosen to inject antitrust violations and it is felt
11 that that involves the same issues as in this case, all
12 I can suggest is it might mean that they ought to be dis-
13 qualified in those two cases also.

14 But, your Honor --

15 THE COURT: I don't see too much importance
16 or significance in the fact that no attempt was made to
17 disqualify them in other litigation. I am concerned with
18 this litigation.

19 MR. ROSE: Well, so far as this litigation
20 is concerned, I don't want to repeat the arguments we
21 made as to why we considered that there was not a sufficient
22 relationship between the cases because there has been
23 nothing additional advanced by Mr. Cohn in that respect.

24 I refer only to your Honor's opinion after
25 having had the benefit of reviewing the pleadings and

4 having had the benefit of the briefs in the case where you
5 concluded that a sufficient relationship between the two
6 law firms in the two controversies exists to suggest
7 that any future confidential communications in the
8 prior cases will be inhibited.

9 That was the gravamen --

10 THE COURT: You see, apparently I incorrectly
11 stated the nature of this particular case and I think
12 perhaps you might state for the record what you contend
13 to be a proper description of what is being raised in
14 this case from an antitrust point of view.

15 I thought that my first paragraph of my
16 February 14th order was correctly stating this litigation
17 but apparently plaintiffs don't agree with it.

18 MR. ROSE: Well, they were seeking an in-
19 junction but, your Honor, they raised antitrust violations
20 relating to first run exhibition films and, as I pointed
21 out in my affidavit in support of the motion to disqualify,
22 Mr. Fleischman of the Buffalo firm had requested from
23 Cinerama's counsel in a letter -- he said, before we can
24 properly and adequately proceed any further with a meaning-
25 ful defense to plaintiffs action we are in need of a great
deal of information concerning the nature and extent of
the activities and extent of Cinerama and Cinerama Releasing

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2 Corporation and in particular their activities in the area
3 to which this action pertains.

4 And that was the basis of our position, that
5 in the course of defending in those cases they would
6 necessarily obtain information that related to Cinerama's
7 overall operations and that was why --

8 THE COURT: Well, the presumption is if you
9 do something crooked in Western New York you probably do
10 it all over the state.

11 MR. ROSE: I think it is not unknown that
12 there are certain practices in the motion picture industry
13 that may extend beyond particular limited jurisdictions.

14 THE COURT: There would be no reason to
15 conduct affairs differently there than here.

16 MR. ROSE: I don't want to go into the
17 merits of the antitrust allegations but --

18 THE COURT: This whole motion is somewhat
19 puzzling to me, Mr. Rose. I find it difficult to under-
20 stand two things:

21 Number one, why you want to chase them out,
22 unless it is merely to delay this case which I trust
23 wouldn't be your motive and, second, why they want to stay
24 in. I've made no finding of any wrongdoing on their
25 part and I adhere to that position but I do think that

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2 there is sufficient relationships between the issues in
3 the Western New York litigation and the issues which may
4 be raised of the pleadings in this litigation, geographic
5 differences very slight, but the connection so great as
6 to create an appearance of professional impropriety,
7 although I am satisfied in fact there wouldn't be an
8 impropriety.

9 It does seem to me that all of you were
10 sort of making turmoil in a teapot here.

11 MR. ROSE: May I point out that in the
12 decision of Hull v. Celanese, the Court there did finally
13 say that any doubts must be resolved in favor of dis-
14 qualification.

15 THE COURT: All of us have always known
16 that; haven't we?

17 MR. ROSE: And I am saying that on the basis
18 of your Honor's conclusion on the record that at least
19 there must be a doubt here which alters the results and
20 as to it being a device to obtain time, that certainly is
21 not the position here.

22 We have been ready to go ahead with this
23 litigation. We have already commenced the other two
24 actions and once this disqualification matter is disposed
25 of, there are motions already before the Court on the

2 question of discovery and when they have been resolved
3 we can move ahead and we are ready and anxious to do so.

4 THE COURT: All right, Mr. Cohn.

5 MR. COHN: Your Honor, I'll try and be brief.

6 As Mr. Rose pointed out, the derivative action wasn't
7 brought on October 4th. However, our answers raising the
8 affirmative defense wasn't filed until after the submission --

9 THE COURT: Do you have a situation where
10 a possibility exists that the attorneys representing
11 knowledgeable clients could sit down together and agree
12 with each other that there was, in practical fact, no
13 difficulty and that it was perfectly all right for you to
14 stay in the case?

15 MR. COHN: We attempted to do that before
16 we came to court and were unable to..

17 THE COURT: So I infer from the fact that
18 no motion has been made in the other two cases that the
19 persons who might be entitled to make such motions have
20 waived their right but I think you can waive your right
21 in Action No. 1 without losing your right in Action 2.

22 MR. COHN: Well, that creates practical
23 problems, your Honor -- where you have to have two law
24 firms in effect doing the same work twice.

25 I have certainly told to my client about

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2 this and explained to him the alternatives as your Honor
3 has pointed them out and it is his decision that we should
4 try and stay in.

5 THE COURT: You shouldn't let your clients
6 make those decisions for you. You ought to find some fellow
7 who likes to issue orders to show cause at 4:45 in the
8 afternoon on Friday and give him this case.

9 MR. COHN: I would like to close very briefly
10 on two points. One, Mr. Rose read from a letter from Mr.
11 Fleischman which I would like to point out that he never
12 received an answer to.

13 THE COURT: That's not unusual in attorney-
14 client relationships, is it?

15 MR. COHN: No, sir. And of course the local Cali-
16 fornia lawyer drafted all the papers in the Buffalo case.

17 Secondly, something that Mr. Rose said I should
18 have pointed out and I apologize for it and that is that
19 in New York, in Manhattan, we are dealing with first run
20 pictures which is alleged in our complaint, and I think
21 is the fact and nobody will deny it, is a very unique
22 market in the world. There is none other like it and it
23 certainly isn't anything like the market in Buffalo and
24 Rochester which is subsequent run, neighborhood runs.

25 We are dealing with a unique market in New

2 || York.

3 THE COURT: That may be but you know I am
4 certain that if you have devices or schemes or techniques
5 that work in Rochester and Buffalo nothing prevents trying
6 them out a little bit in Manhattan.

7 MR. COHN: Well, your Honor, we happen to
8 be co-defendants in a case in Manhattan and of course we
9 know of no such devices or conspiracies here in New York
10 because we are a co-defendant in those cases and so I
11 think they must act differently if what they say in
12 Buffalo is true but also, Cinerama is really out of the
13 distribution business.

14 THE COURT: May we go off the record for a
15 moment?

16 (Recess)

17 THE COURT: Gentlemen, the Court has con-
18 ferred with counsel informally with the hope that some
19 arrangements might be made which will be mutually satis-
20 factory and I am satisfied that that cannot be done and
21 that the inability to do so is not caused by obduracy of
22 any attorney but by factors that seem to be beyond the
23 direct control of any lawyer in this matter and the Court
24 does appreciate the fact that counsel has taken the time
25 to enter into a frank discussion which, however, doesn't

161a
Colloquy

1 jbjw

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2 bear, in any sense, on the merits of this particular applica-
3 tion before me.

4 On reconsideration, I do find that while the
5 Court may have stated the nature of the relief sought in
6 this case somewhat incorrectly, there is still sufficient
7 nexus between the two litigations so that the appearance
8 of impropriety which the Court found to exist in its
9 memorandum order of February 14th is present here and that
10 the required disqualification has not been waived in this
11 action by Cinerama, although Cinerama in my view would
12 have the right to waive it and apparently has waived it
13 by inaction in these other two cases and for that reason
14 and in reliance primarily upon the direction of the Court
15 of Appeals in this circuit in General Motors Corporation
16 against the City of New York, 501 F. 2d 639, and the
17 other cases cited in my February 14th memorandum opinion,
18 I am granting reargument and on reargument I am adhering
19 to my determination and it is so ordered on this record.

20 I thank you, gentlemen.

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Order of Judge Charles L. Brieant, Jr. on Reargument

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

CINEMA 5, LTD.,

Plaintiff,

-against-

CINERAMA, INC., et al.,

Defendants.

-----X

J. L. D. U. P. T.
MAY 8 1975
D. OF N. Y.
74 Civ. 3549-CLB

ORDER ON REARGUMENT

The Court having, by Memorandum Endorsement dated April 3, 1975, granted reargument of its Memorandum and Order dated February 14, 1975, and having heard counsel this date with respect thereto, and having made further findings as set forth on the transcript of hearing, it is

ORDERED, that the aforesaid prior determination made February 14, 1975 is hereby confirmed and adhered to.

Dated: New York, New York
May 7, 1975

Charles L. Brieant, Jr.
CHARLES L. BRIEANT, JR.
U. S. D. J.

one (1)
Service of ~~1~~ (2) copies of
the within Joint App. is hereby admitted this
6th day of June, 1975
Phillips, Niger, Sujan, Kao & Balle
Attorney for Respt